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**1868**



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L I V E S  
OF  
THE LORD CHANCELLORS  
AND  
KEEPERS OF THE GREAT SEAL  
OF  
ENGLAND,

FROM THE EARLIEST TIMES TILL THE REIGN OF KING GEORGE IV.

BY JOHN LORD CAMPBELL, LL.D., F.R.S.E.

*FIFTH EDITION.*

IN TEN VOLUMES.—VOL. VIII.

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# CONTENTS

OF

## THE EIGHTH VOLUME.

CHAP	PAGE
CLXVI.—CONTINUATION OF THE LIFE OF LORD LOUGHBOROUGH TILL THE COMMENCEMENT OF HOSTILITIES WITH AMERICA .. .. .	1
CLXVII.—CONTINUATION OF THE LIFE OF LORD LOUGHBOROUGH TILL HE WAS MADE CHIEF JUSTICE OF THE COURT OF COMMON PLEAS .. .. .	24
CLXVIII.—CONTINUATION OF THE LIFE OF LORD LOUGHBOROUGH TILL HE WAS APPOINTED FIRST COMMISSIONER OF THE GREAT SEAL UNDER THE COALITION MINISTRY	44
CLXIX.—CONTINUATION OF THE LIFE OF LORD LOUGHBOROUGH TILL THE KING'S ILLNESS IN 1788.. .. .	69
CLXX.—CONTINUATION OF THE LIFE OF LORD LOUGHBOROUGH DURING THE DISCUSSIONS RESPECTING THE RE- GENOY .. .. .	82
CLXXI.—CONTINUATION OF THE LIFE OF LORD LOUGHBOROUGH TILL HE WAS MADE LORD CHANCELLOR .. ..	105
CLXXII.—CONTINUATION OF THE LIFE OF LORD LOUGHBOROUGH TILL THE CONCLUSION OF HASTINGS'S TRIAL ..	118
CLXXIII.—CONTINUATION OF THE LIFE OF LORD LOUGHBOROUGH TILL THE COMMENCEMENT OF THE INTRIGUES WHICH ENDED IN HIS RESIGNATION AND THE DISSOLUTION OF MR. PITT'S ADMINISTRATION ..	151

CHAP.	PAGE
CLXXIV.—CONTINUATION OF THE LIFE OF LORD LOUGHBOROUGH TILL HE RESIGNED THE GREAT SEAL .. ..	168
CLXXV.—CONCLUSION OF THE LIFE OF LORD LOUGHBOROUGH	197
CLXXVI.—LIFE OF LORD CHANCELLOR ERSKINE FROM HIS BIRTH TILL HE WAS CALLED TO THE BAR.. ..	223
CLXXVII.—CONTINUATION OF THE LIFE OF LORD ERSKINE TILL HE ENTERED THE HOUSE OF COMMONS .. ..	243
CLXXVIII.—CONTINUATION OF THE LIFE OF LORD ERSKINE TILL THE CONCLUSION OF THE CASE OF THE DEAN OF ST. ASAPH .. .. .	262
CLXXIX.—CONTINUATION OF THE LIFE OF LORD ERSKINE TILL THE COMMENCEMENT OF THE STATE TRIALS IN 1794 .. .. .	280
CLXXX.—CONTINUATION OF THE LIFE OF LORD ERSKINE TILL THE CONCLUSION OF THE PROSECUTIONS FOR HIGH TREASON AGAINST THE ADVOCATES FOR A REFORM IN PARLIAMENT .. .. .	305
CLXXXI.—CONTINUATION OF THE LIFE OF LORD ERSKINE TILL THE TRIAL OF HADFIELD FOR SHOOTING AT GEORGE III... .. .	327
CLXXXII.—CONTINUATION OF THE LIFE OF LORD ERSKINE TILL HIS VISIT TO PARIS DURING THE PEACE OF AMIENS	346
CLXXXIII.—CONTINUATION OF THE LIFE OF LORD ERSKINE TILL HE BECAME LORD CHANCELLOR .. ..	362
CLXXXIV.—CONTINUATION OF THE LIFE OF LORD ERSKINE WHILE HE WAS LORD CHANCELLOR .. .. .	374

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# LIVES

OF THE

## LORD CHANCELLORS OF ENGLAND.

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### CHAPTER CLXVI.

CONTINUATION OF THE LIFE OF LORD LOUGHBOROUGH TILL THE  
COMMENCEMENT OF HOSTILITIES WITH AMERICA.

ALTHOUGH it was said that "Lord Clive was full of indignation at the desertion of Wedderburn,"<sup>a</sup> Mr. Solicitor vacating his seat, was re-elected for Bishops Castle <sup>A.D. 1771.</sup> without opposition;<sup>b</sup> but he had before him the disagreeable prospect of walking up to the table between two Treasury members (his Liberal associates now shunning him), and of slinking down on the Treasury bench between Lord North and John Robinson.<sup>c</sup> He dreaded that opposing parties, suspending their general hostility, would, on this occasion, interchange well-understood looks, occasioned by mutual wonderment at his apostasy. When the time came, he is said virtuously to have blushed, and to have appeared much distressed, till his colleague Thurlow shook him by the hand, and with an oath welcomed him to that side of the House which he ought never to have quitted. He for some time wore an embarrassed air, and when he had anything to say he seemed to have lost all his fluency. It was probably with reference to these exhibitions that Junius remarked, "To sacrifice a respected character, and to renounce the esteem of society, requires more than Mr. Wedderburn's resolution; and though in him it was rather a profession than a desertion of his prin-

<sup>a</sup> Chatham Correspondence, iv. 80.

<sup>b</sup> The new writ was moved 25th Jan. 1771.  
—Com. Journ. vol. xxxiii. p. 62.

<sup>c</sup> This famous *job-master*, then Secretary to the Treasury, was probably active in

bringing him over. Soon after, Sheridan, alluding to a government agent by whom members were corrupted, and a cry arising, "*Name him! name him!*" said, "Sir, I could name him, as easily as say JACK ROBINSON."

ciples (I speak tenderly of this gentleman, for, when treachery is in question, I think we should make allowance for a Scotchman), yet we have seen him in the House of Commons overwhelmed with confusion, and almost bereft of his faculties."

He was much aided by an attack made upon him, which gave him an opportunity for a dexterous explanation, and enabled him to recover to a considerable degree his position in the House. Having given notice of motion for a committee to inquire into the riots near the Houses of Parliament, on the commitment of Brass Crosby, the Lord Mayor of London, and Alderman Oliver, to the Tower, Colonel Barré rose and said very irregularly,—

"I thank the honourable and learned gentleman for his intention of moving for a committee to inquire into the causes of these riots. He will be the fittest man to conduct such an inquiry, seeing that he knows more of such matters than any of the King's present servants. I hope he will inquire not only into the causes of the assembling of recent mobs, but of those which have alarmed the public for the last three or four years, as I know that the honourable and learned gentleman has frequently declared in this House and in other places, that 'this wicked Administration has been the cause of all the misfortunes that have befallen the country—that nothing but the removal of this wicked Administration, and the dissolution of this profligate Parliament, could restore the peace and happiness of the kingdom.' I am persuaded that all his powers of eloquence will be directed to those great objects. This inquiry will afford him the finest possible opportunity of discharging the debt which he still owes to his country. As no man is better able, so no man, I am sure, can be better inclined to do it; for I have heard him declare from this bench that the King's chief minister ought to be impeached. The honourable and learned gentleman has kept exceeding *good* company—I do not say *great* company—but what I consider very *honest* company—the freemen of the corporation of London! If I am not mistaken, he did not disdain himself to become a member of that body; and I believe he was pleased to receive the freedom of the city in a gold box. Although since that time the honourable and learned gentleman has formed new connections, he cannot have altogether abandoned the sentiments by which he was formerly actuated. Of all men, therefore, he is the fittest to bring the causes and the occasions of these disturbances to public light."

*Mr. Solicitor-General Wedderburn.*—"I hope the House will permit me to express my obligations to the gallant officer who has thought fit to make my political conduct the subject of his argument. Of that conduct, Sir, I shall always be ready to give an account. It may easily be summed up,—and in a very few words. With regard to the measures which I have supported in this House, and the public part I have taken out of it,—I have not repented of any measure I have ever

supported—I have not learned to approve of any measures I ever opposed. I shall be extremely happy to have my future conduct tried by any principles I may at any time hitherto have professed. As to personal connections, I stand up, with great frankness and great truth, to declare that I had a personal connection which I infinitely valued and respected, and by which I held myself sacredly bound till death dissolved it—a connection founded upon friendship, founded upon gratitude, founded upon a conviction of the many virtues, public and private, of him with whom my lot was cast. It is a misfortune, not only to me but to this country, that we are deprived of the services of that excellent man [George Grenville]. In point of personal connections, he left me a solitary, unconnected individual. In following the line of conduct which seems to me most consistent with my public duty, no one can say that I have broken any private engagement into which I have ever entered.”<sup>d</sup>

This dexterous use of Mr. Grenville’s death misled many, and made the more knowing regard with a feeling approaching to respect the tact of him who could so defend himself by such a fallacy.<sup>e</sup>

When he had got over the disgrace which, even in those days, was for a time incurred by such a sudden change of party, he proved to be a brilliantly effective supporter of the Government. “It was a proud day for the Bar,” says Matthias,<sup>f</sup> “when Lord North made Thurlow and Wedderburn Attorney and Solicitor-General; for never before that day were such irresistible, overbearing talents and powers displayed by the official defenders of Ministers.

“ ———— Hos mirabantur Athenæ  
Torrentes, pleni et moderantes fræna theatri.”

“The minister,” observed Horne Tooke,<sup>g</sup> “sat secure between his two brazen pillars, Jachin and Boaz, to guard the Treasury bench.”

Said Gibbon, giving an account of his entrance into the House of Commons, “The cause of Government was ably vindicated by Lord North, a statesman of spotless integrity, a consummate master of debate, who could wield with equal

<sup>d</sup> 2 Cavendish’s Debates, 474.

<sup>e</sup> Calcraft, in a letter to Lord Chatham, referring to this debate, says,—“Wedderburn was fully paid off for his insolence by Barré, who dressed him with dignity, propriety, and great severity.”—*Chatham Correspondence*, iv. 138. But Lord Commissioner Adam, in his MS. sketch of Wedderburn, says,—“He had to defend himself against a bitter attack

for accepting the office of Solicitor-General under Lord North. His speech on that occasion produced a most unaccountable impression. When I came into the House of Commons in 1774, he was one of the speakers most in favour with the House.”

<sup>f</sup> Pursuits of Literature.

<sup>g</sup> State Trials.

dexterity the arms of reason and of ridicule. He was seated on the Treasury bench, between his Attorney and Solicitor-General, *magis pares quam similes*; and the minister might indulge in a short slumber whilst he was upholden on either hand by the majestic sense of Thurlow, and the skilful eloquence of Wedderburn."<sup>h</sup>

Mr. Adolphus, in contrasting them, says, "Thurlow was nervous, impressive, and majestic; he delivered the resolute dictates of a superior intellect without soliciting applause. From him truth appeared above the aid of art; and the judgment was summoned to yield without an appeal to the intervention of fancy. Wedderburn was acute, perspicuous, elegant, and persuasive; he alternately essayed the force of reason and the charms of eloquence; sometimes attacking the judgment with refined argument, at other times appealing to the fancy with the powers of wit and graces of elocution."<sup>i</sup>

I have likewise much pleasure in introducing a very happy parallel between them by Mr. Townsend:—"Both law officers exercised considerable sway in the House, but in a perfectly distinct style and manner; the one the Ajax, the other the Ulysses, of debate. The one, blunt, coarse, and vigorous, hurled hard words and strong epithets at his opponents in a tremendous voice, with a look and tone of defiance; the other, elegant, subtle, and insinuating, arrayed his arguments in all the persuasive guises of rhetoric, and where he could not convince the reason, or move the passions, sought to silence objections with ironical pleasantry and bitter sarcasm. Their rival feats of eloquence may be compared to the trial of strength and dexterity between Cœur de Lion and Saladin, mentioned in the 'Talisman' by Sir Walter Scott. King Richard, with his two-handed sword, cut asunder the iron bar which no arm but his could have severed: the Soldan could exhibit no such miracle of muscular strength, inferior as he was in brawn, and sinew, and muscle; but with his blue scymetar he severed the cushion and veil into two equal parts, displaying at the same time the extreme temper and sharpness of the weapon, and the exquisite dexterity of him who used it."<sup>k</sup>

<sup>h</sup> Memoirs, p. 146.

<sup>i</sup> Vol. ii. p. 150.

<sup>k</sup> Lives of Twelve Eminent Judges, vol. i. p. 185.

Here is an amusing peep behind the curtain, showing how the actors got up their parts:—"Lord Haddington asked W. once when he was Chief Justice, how he possibly



We have extremely defective reports of Wedderburn's official speeches in the House of Commons, from which he gained so much contemporary applause. He seems to have taken some pains in revising them while he was an Opposition orator, but now to have been too much occupied to pay the slightest attention to them, although parliamentary reporting was then at the lowest ebb, Dr. Johnson having long withdrawn from this employment, and no other man of education having taken it up. The following is his account of those on whom, in his time, the reputation of the orator depended: "Of all people, shorthand writers are the farthest from correctness; there are no men's words they ever hear that again return. They are in general ignorant, as acting mechanically; by not considering the antecedent, and catching the sound and not the sense, they pervert the meaning of the speaker, and make him appear as ignorant as themselves."<sup>m</sup> Yet he acknowledged that they occasionally showed ability, if not accuracy. Being once asked if he had really delivered a certain speech which the newspapers imputed to him, he replied, "Why, to be sure, there are in that report a few things which I did say, but many things which I am glad I did not say, and some things which I wish I could have said."

One subject entirely engrossed the attention of the House of Commons during the first session of Wedderburn's official

contrived to get on with Thurlow when he was under him as Solicitor, considering the unwonted quantity of public work they had to do together, both as to America, France, and Spain, owing to the indolence of Lord North and the incapacity of several of his colleagues. 'Nothing was so easy,' said Lord L. 'I knew Thurlow to be a bully, and only a bully, with no moral nerve—but intolerable if not subdued; so I resolved on my course. The first paper I had to prepare was one of great importance and difficulty, and I sent it to him that he might consider and revise. When I saw him he swore fearfully, declared that 'there never was any thing so ill done—it could not be used. He had no time to correct it—it was too bad to be corrected, I must do it over again.' I said, 'I beg your pardon—I have done my best: I know there are great imperfections in it—I am not satisfied myself, but I cannot do it better; I have bestowed my whole mind on it, and if you cannot take it you must prepare the paper yourself.' He growled very savagely, but he saw I was quite determined, and so I left it

with him. When we next met, he produced my paper without a word of alteration—said he had no time to alter, that it must just do, but it was a perfect disgrace to us both, and he should say so—for he was ashamed of the paper.' 'Indeed, Mr. Attorney, you *shall not* say so, and it is better that we understand each other once for all. I will assist you to the utmost of my power; if you cannot use the papers I draw, then of course I may be unfit for my office, and you must do the work; but if you adopt my paper, it is no longer mine—it is yours, and *must* be yours, and yours alone. I will have neither merit nor discredit from it.' I said this with the utmost coolness: he swore away, but said, 'Well, take it away—it will do as well as anything else, I suppose.' I never afterwards had a single difference with him."

<sup>m</sup> Burke's famous sentiment,—"Virtue does not depend on climates or degrees," was at first given to the world—"Virtue does not depend on *climates and trees*."—He has nobly vindicated his reputation by reporting and publishing his own speeches,

life,—the Privilege question, arising out of the attempt to prevent the publication of debates. From the stimulus given to political discussion by the controversy on the Middlesex election, and by the “Letters of Junius,” there was an increased curiosity respecting parliamentary proceedings, and the newspapers began to give, though in a rude fashion, while Parliament was sitting, speeches said to have been delivered in either house, with the names of the speakers at full length. The audacious printers were summoned to appear at the bar, and, not appearing, a proclamation was put forth offering a reward for their apprehension. Then was the messenger of the House, who had been sent to arrest them, committed to prison by the City magistrates, and a printer arrested was immediately liberated and bound over to prosecute the messenger. Next came the imprisonment, in the Tower, of the committing magistrates, Brass Crosby, the Lord Mayor, and Alderman Oliver,—with innumerable petitions and motions for their discharge. The Solicitor-General must necessarily have taken an active part in these proceedings, but he is only mentioned by the “Parliamentary History” as having spoken on the 19th of March, when a question arose as to the right of one Twine Carpenter, a printer’s devil, to a reward for having laid hold of a Mr. Wheble, his master, one of the printers named in the proclamation, and conducted him to the Mansion House, where he was set at liberty by Mr. Wilkes,—there being an allegation that this arrest was merely collusive, so that the reward might be claimed, and the authority of the House turned into ridicule.

*Mr. Solicitor-General Wedderburn.*—“Sir: Whether the proclamation be legal or not, I shall not now say. A court of law is the proper place to determine that question. As to Mr. Twine Carpenter, for whom the honourable gentleman is so warm an advocate, I shall certainly resist giving him any countenance. He is neither more nor less than a familiar of Mr. Wheble, called his ‘devil;’ by a bargain between this devil and Wheble the devil arrests him. Now, as it manifestly appears that the devil and the printer are in compact, I think the wisest thing we can do is to leave the devil to the printer, and the printer to his devil. Whether printer beats devil, or devil beats printer, is of no consequence. There is the devil to pay; but that is nothing to us. I hope the devil will find no friends in this House, and that, however

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“ Formerly the Reports did not come out till after the prorogation—pretending often to be of the senate of Lilliput, and never venturing on more than the initials of the names of the speakers.

busy he may have been in the City, and however busy the City may have been with him, we shall have nothing to do with him, nor give him an opportunity of having any thing to do with us.”<sup>o</sup>

Lord North moved, as an amendment, that Mr. Wilkes should attend to explain his conduct. This, like the other Government motions on the subject, was carried by an immense majority; but public opinion was so strong against the House, that the Ministers were compelled to drop these proceedings,—a great constitutional victory was gained, and the right to publish parliamentary debates was for ever practically established,—in spite of the *brutum fulmen* of a standing order against it.<sup>p</sup>

About this time Wedderburn gained high credit as an enlightened protector of literary merit. Mr. Thomas Townshend had complained in the House of Commons of the pension granted to Dr. Johnson, saying, “I consider him a man of some talent, but no temper. The principles he upholds I shall ever detest. This man, a Jacobite by principle, has been encouraged, fostered, pensioned, because he is a Jacobite.”

*Mr. Solicitor-General Wedderburn.*—“The misinformation of the honourable gentleman, if not corrected, will do injustice to two persons, both absent. From the course of my pursuits, I have not seen Dr. Johnson four times in my life. This, however, I know,—that he was not pensioned because he was a Jacobite, nor on account of his political principles;—that he was not pensioned from any such illiberal motive. The only motive for granting that pension was Dr. Johnson’s distinction in the literary world and his prospect of approaching distress. The person who solicited it for him was totally unacquainted with any thing beyond his merit as an author and his poverty. Was not the ‘Dictionary of the English Language’ reason enough for a mark of public bounty, without supposing that bad principles were to be encouraged, or corrupt services were to be purchased? The Minister to whom the application was made, and the man who made the application, never inquired into his political or religious tenets. If a Papist, or a theoretical admirer of a republican form of government, should be a great mathematician or a great poet, doing honour to his country and his age, and should fall into destitution, is he to be excluded from the royal bounty? Let not such language be held in this House, or in any society where there is any respect for intellectual greatness.”<sup>q</sup>

The Minister applied to was Lord Bute, and the man who made the application was Mr. Wedderburn himself. Boswel.

<sup>o</sup> 17 Parl. Hist. 58—164; Annual Register, 1771.

<sup>p</sup> Chatham Correspondence, vol. iv. p. 116.

<sup>q</sup> 2 Cavendish Deb. 457.

says, "Lord Bute told me that Mr. Wedderburn, now Lord Loughborough, was the person who first mentioned the subject to him. Lord Loughborough told me that the pension was granted to Johnson solely as the reward of his literary merit, without any stipulation whatever, or even tacit understanding that he should write for Administration. Lord Bute said to him expressly, 'It is not given for any thing you are to do, but for what you have done.'"

For above two years following, England enjoyed profound public tranquillity. The dispute with Spain about the Falkland Islands having been adjusted, there was a cordial understanding with all foreign nations,—the discontents in the American colonies smouldered, although accurate observers perceived that they would soon burst into a flame,—and Wilkes, Brass Crosby, and Alderman Oliver being set at liberty, soon fell into almost entire neglect." During this lull there were brought forward in parliament few questions more stirring than the subscription to the Thirty-nine Articles,—the amendment of the law of charitable bequests,—the protection of literary property,—the establishment of courts of justice in India,—and the renewal of the Grenville Act. On the presentation of a petition to dispense with subscription to the Thirty-nine Articles in the Universities, a long debate arose, whether the petition should be received? Lord North opposed it; but it being considered an open question, the Solicitor-General took the opposite side, indulging always in a hankering after popularity where he safely could. He urged that the subject was clearly within the cognizance of Parliament, and that they were bound to hear the alleged grievances of the people, although they might not deem it expedient to grant the relief prayed. The objection on the Act of Union he ridiculed, after the alterations since made both in the English and Scotch Church—in the English by the law against occasional conformity—in the Scotch by the restoration of lay patronage. "The Universities," said he, "which are to prepare for all the learned

<sup>r</sup> 1 Boswell, pp. 353, 354. Yet Dr. Johnson did, out of gratitude, write "The False Alarm," and "Taxation no Tyranny," the proof-sheets of which were revised at the Treasury.

\* It would appear from a letter of Wedderburn to his client and friend Lord Clive, that their liberation even went off tamely:—

"There are no public news in town. We had a little mobbing last night (on the release of the Lord Mayor from the Tower), but not to any great excess. My neighbour the Speaker had his windows mauled exceedingly; but by great good fortune the gentlemen were so busy with his, that they left mine untouched." —*Townsend's Licer*, vol. i. p. 179.

professions, and to rear fit members of parliament, ought not to be confined to those of a particular creed; and we must reform them, if they will not reform themselves. I cannot conceive that the propriety or efficacy of a prescription can depend upon whether the physician has or has not signed the Thirty-nine Articles of the Church of England." The petition was rejected, however, by a majority of 217 to 71.<sup>1</sup>

In the next session Mr. Solicitor brought forward a bill on a subject which still continues to perplex legislators—"the regulation of charitable trusts." His speech was very able, but proved ineffectual. The reporter of the debate says, "Mr. Edmund Burke answered him with infinite ability and candour. We do not remember that gentleman making a speech in which he stuck so close to the argument, and made so few flights into the regions of fancy and imagination."<sup>2</sup>

Wedderburn, having been counsel at the bar of the House of Lords in the great case of copyright, delivered a most admirable argument, to show that an author, by the common law, has a property in his work after he has published it, so as to be entitled to prevent its being reprinted without his authority;<sup>3</sup> and being defeated, he very ably supported against Thurlow the bill for extending the period of exclusive enjoyment beyond fourteen years, originally fixed by the statute of Anne.<sup>4</sup>—India judicature, and the general affairs of the East India Company, being pressed on the attention of Parliament, Wedderburn carried some palliating measures on the part of Government through the House of Commons;—but they then excited no interest—men little foreseeing that in ten years more this was a subject on which administrations would be dissolved and the nation would be convulsed.<sup>5</sup> The proposal to make the Grenville Act perpetual raised another open question,—and Lord North and the Attorney-General having opposed it, we are told, "The Solicitor-General, in a

<sup>1</sup> 17 Parl. Hist. 294. Of this debate Gibbon gives the following scoffing account to Lord Sheffield. "Boodle's, Saturday night, February 8, 1772. Though it is very late, and the bell tells me that I have not above ten minutes left, I employ them with pleasure in congratulating you on the late victory of our dear inamma, the Church of England. She had last Thursday 71 rebellious sons, who pretended to set aside her will on account of insanity; but 217 worthy champions, headed by Lord North, Burke, Hans Stanley, Charles Fox, &c., though they allowed the thirty-nine

clauses of her Testament were absurd and unreasonable, supported the validity of it with infinite humour."—*Misc. Works*, vol. i. p. 447. The very rare occurrence happened, on this occasion, of publishing a list of the minority,—in which the world must have been surprised to find the name of the "wary Wedderburn."

<sup>2</sup> 17 Parl. Hist. 846.

<sup>3</sup> Ib. 963.

<sup>4</sup> Ib. 1087.

<sup>5</sup> Ib. 848.

long and masterly speech, expatiated on the foundation of the bill. He was very severe on Mr. Charles Fox, who, he said, had dreadful apprehensions of losing his privileges. But if the young gentleman were not of such an obstinate disposition, he would endeavour to convince him of his error. He spoke much in favour of the decision of elections that had been tried by this act, and concluded by giving his consent to its being perpetual." <sup>a</sup> There was a majority of 250 to 122 for the bill—although Fox continued so eager against it, that he was teller for the minority.

As some have asserted that Wedderburn was "Junius," it may be proper to notice the course he took when a complaint was made against Henry Sampson Woodfall and John Horne Tooke, for a libel on the Speaker. This had appeared in Woodfall's newspaper, "The Daily Public Advertiser," and he had declared at the bar that he had received it from Horne Tooke,—but there was no evidence to corroborate him. The Solicitor-General spoke several times in the course of the proceeding, and certainly did show a considerable leaning in favour of the publisher of the mysterious letters which had lately so astounded the public. "I own, Sir, with great readiness," said he, "that as Mr. Woodfall is involved in the guilt of this publication, I shall not, either on principles of law, or principles of humanity, give my vote for Mr. Horne's conviction, if nothing more is produced against him. Mr. Woodfall, Sir, however he may have been distinguished for his private probity, stands before us now in the light of a delinquent, and we cannot convict upon his uncorroborated testimony, whatever may be our private opinion, and whatever suspicion may attach to the accused. From the candid behaviour of Mr. Woodfall, when he was before the House, he is probably not in a very perilous situation: but it remains to be seen how we shall deal with Mr. Horne; if his friends do not really suspect his innocence, they have no cause to tremble for his situation. I think that Mr. Woodfall's journeymen should be examined. We are not trying Mr. Horne twice for the same offence; we shall only adjourn the trial to ascertain whether he be guilty on the original

<sup>a</sup> 17 Parl. Hist. 1071. I must own that I think the arguments against the trial of contested elections by a statutable tribunal under the control of the courts of common law very powerful, and that the House of Commons would have done better to have framed

committees by resolutions, under their own exclusive authority. They wanted nothing for this purpose but the power of administering an oath,—which in all cases ought to be exercised by them as well as by the House of Lords.

charge." A motion for examining Mr. Woodfall's journeymen was carried by a majority of 132 to 44.<sup>b</sup> When called in they all professed entire ignorance of the subject,—so that Horne Tooke for this time got off scot free. There was a proposal to send Woodfall to Newgate, but, from the good word of the Solicitor-General, he was dismissed with a reprimand.—The notion that Wedderburn himself had been the greatest of libellers, now gained a little ground, notwithstanding the bitter abuse of him and of his country in which Junius pretended to delight: but (as I shall afterwards show) this extravagant suspicion is without proof or probability.

From the want of opportunity and of excitement, Wedderburn's reputation for eloquence was declining,—when it was revived by General Burgoyne's resolutions against Lord Clive. Lord North affected to support the prosecution, but did not treat it as a government question; and Wedderburn, though he knew that he was to be opposed by Thurlow, made a gallant defence for his friend and patron:—

"The honourable mover," said he, "has entered into a long recapitulation of events which happened sixteen years ago, and from them he adduces two matters of charge: those I desire leave to examine: the one is the dethroning and putting to death Surajah Dowlah; and the other is a general officer's name being fixed to an order of assassination. Upon the subject of the resolution I shall observe, that it is a most narrow and illiberal idea to suppose that great and striking events—subversions of government, wars, and conquests—are to be carried through upon the direct and absolute principles of school philosophy and morality;—such a supposition would be idle, would be preposterous. I will venture to assert that a revolution so important never was, and never will be, so conducted. Throughout the honourable gentleman's copious narrative of the transaction, I am rather astonished that we should have heard not a word of the character of Surajah Dowlah,—no allusion to the black hole at Calcutta,—not a word of that vengeance and retributive justice which must have been prompted by the most cruel, black, and horrid exercise of tyranny which stains the annals of human nature. Is this candid? Is this the principle to guide inquiry, and to mete out punishment? The real fact is this;—a monster of tyranny, a murderer and a villain, our mortal enemy, is to be dethroned. He is dethroned by a conquering army, and put to death. This transaction—a series of fighting and victory—was so rapid, that every moment was filled with great events. From these originated the vast empire of the East India Company. Without these the East India Company would have continued pedlars instead of

being transformed into mighty sovereigns. The honourable gentleman has declaimed much on the stain upon the British name from the manner in which this revolution was conducted. I am of a very different opinion: when our feuds and animosities are forgotten, the recording pen of a candid historian will trace in imperishable characters the just eulogy, that in a revolution which acquired to the Company a dominion larger, wealthier, and more populous than ever Athens possessed, or Rome herself when she had conquered the Italian states,—larger than France, and in revenues superior to most of the powers of Europe,—that in the career of such conquests very few occurrences happened which reflected dishonour on individuals,—none that tarnished the British name. As to General Cailland's signature standing to an order of assassination, he solemnly declares that the whole was a feint of the Nabob to discover the sentiments of the army, protests that, had he known the use which was made of it, he would not have done it for a thousand worlds: in this he appeals to the testimony of the whole army and navy, and to every officer in the civil service. One of the resolutions is, that all the fortunes then made are, after sixteen years, without distinction, to be refunded. For shame! What! is this to be the national gratitude for exploits which have been the pride of Britain, the envy of Europe, and the admiration of the whole world? Upon such odious insinuations are we to raise an envious hand against those laurels which flourish on the brows of men who have done so much? You would now plunder the men to whose bravery, conduct, and unparalleled activity you owe this vast empire. You would imitate the democratic tyranny of an Athenian mob, envious of every great and noble name,—taking off one for his wealth, imprisoning another for family, and banishing a third for his fame. It is this detestable spirit which would establish real tyranny at home, in complaining of imaginary grievances in distant lauds."

The resolutions were all carried, but there was a reaction in the public mind in favour of Clive, after his melancholy end; and posterity has done him justice, by regarding him as one of the greatest of conquerors and of statesmen.\*

We find, from the following familiar letter to him, that

\* 17 Parl. Hist. 862. Gibbon, who heard this speech of Wedderburn, seems to have thought justly that it was rather declamatory. "11 May, 1773.—The House of Commons sat late last night. Burgoyne made some spirited motions. Wedderburn defended the Nabobs with great eloquence but little argument. The hounds go out again next Friday. They are in high spirits; but the more sagacious ones have no idea they shall kill. Lord North spoke for the inquiry, but faintly and reluctantly."—*Miscell. Works*, vol. i. p. 469.—Lord Clive was very desirous of having this vindication of his conduct revised

and printed by the author; but Wedderburn was wisely contented with the éclat he had acquired from the newspaper-reports of it. I have known several instances of an orator kicking down the reputation of a successful speech by publishing it—success in speaking often arising from accidental circumstances which do not touch the reader. It is better, therefore, that there should be an opening for friends to allay public disappointment by observing—"What a pity he did not follow the example of Burke, and publish a full and correct edition of his speech, instead of trusting to vile newspaper-reporting!"



Wedderburn, ever most zealously earnest to exalt his actions and to clear his character, was striving to see justice done to him by the great patriarch of literature, who was then supposed to be able to guide the opinions of mankind on all civil affairs:—

“MY DEAR LORD,

“Mr. Stuart informs me that he has sent your Lordship a letter he received from the gentleman (Dr. John More) who has the care of the Duke of Hamilton at Geneva, expressing the desire that Voltaire has to be informed of the affairs of the East Indies, and to celebrate the great actions that have been done there. I took the precaution of desiring Mr. Clive to load his trunk with the most important papers that are printed on that subject; but it has occurred to me that he would deliver them with a better effect if they were introduced by a few lines from your Lordship, or at least a written message to the old gentleman. I don't know whether Mr. King is at Walcot; he would be delighted to have an occasion of addressing his favourite author on this subject. Lady Clive will, I am afraid, scruple at a correspondence with so free a writer; but whatever mischief his works may do for a better state, in this world they are very entertaining; and that justice to your fame, which is everywhere your due, will have a very good effect in England, coming from the pen of a Frenchman, writing at the foot of the Alps. I have seen no creature but lawyers for a fortnight past, and I know no news. Robert desires I would make his apology to your Lordship for suffering himself to be seduced by me to give me one day at Mitcham, which I am sure you will forgive. Mrs. W. joins me in compliments to Lady Clive and Miss Ducarelle, and I am, my dear Lord,

“Yours most sincerely,

“A. W.

“Lincoln's Inn Fields, 9th July, 1773.”<sup>d</sup>

I should be glad, for the relief of the reader, if I could here

<sup>d</sup> Townsend's *Lives*, vol. i. p. 179. Wedderburn continued on friendly terms with Lord Clive, and there are to be found in the Rosslyn MSS. a considerable number of letters from the one to the other; but they turn chiefly on the local politics of the county of Salop, and on private business. I give an extract from a letter of Lord Clive to Mr. Wedderburn of a different complexion, dated Geneva, Dec. 19, 1775, showing the enthusiastic implety of Voltaire, which unhappily was then much admired:—“To prevent dūr being quite melancholy, however, the Château de Ferney has furnished us with a little anecdote: it is almost too trifling for a place in a letter; its only claim is the want of other events more interesting. Monsieur

Gibber, one of the Paris literati, paid a visit to Ferney. Voltaire was ill, and not to be seen; he gave orders, however, for his visitors being well entertained. Monsieur Gibber, after having dined and waited a long time ineffectually, in hopes that Voltaire would appear for a moment, wrote on a card these lines:—

‘Je croiois voir ici le vrai Dieu du Génie,  
L'entendre, lui parler, l'admirer en tout point:

Mais il est comme Dieu dans l'Encabristie,  
On le mange, on le boit, mais on ne le voit point.’

“Que l'on m'amène,” cries Voltaire, “ce cher imple, ce cher incrédule!”

present the subject of this memoir as he then was in private life; but I have been able to find little except his struggles for professional and political advancement. On the 1st of December, 1767, he had married Betty Anne, sole child and heir of John Dawson, of Marly in the county of York, Esq., who brought him a considerable fortune, and he lived with her harmoniously and courteously,—but he was childless, and his chief enjoyment seems to have been in ambition. He never abandoned himself to the amusement of the hour; he was not even solicitous to shine in conversation, considering the *éclat* from a *bon mot* in the salon poor compared with that from a brilliant speech in Parliament. Having little pleasure in literature for its own sake, he referred to books only that they might assist him in his speeches, and he mixed with literary men that they might sound his praise. He was now able to gratify his passion for splendour, in which he seems to have taken delight, independently of its tendency to raise his consequence in the world. He told Lord Haddington that the day he was made Solicitor-General he ordered a service of plate which cost him 8000*l*. Lord Clive for his services had not only given him lacs of rupees and returned him to Parliament, but had magnificently made him a present of a splendid villa at Mitcham in Surrey. Here he used on Saturdays and Sundays to entertain the great and the witty. He likewise had an elegant house in Lincoln's Inn Fields, not far from that occupied by the Duke of Newcastle—a quarter which I recollect still remaining the envied resort of legal magnates. A coach and six was no longer considered indispensable for a law officer of the Crown;\* but in horses and equipages he rivalled the nobility, so that, if his debts had been all paid, it is doubtful whether at this time he would have been found richer than when he was set down at the Bull and Mouth by the Edinburgh stage coach. Yet he never allowed such matters at all to interfere with his attention to business, and he could throw his whole soul into any cause in which public distinction was to be acquired.

I now come to his memorable contest with Benjamin Franklin.<sup>f</sup>

\* When Sir Dudley Ryder (who had not been long dead) was Attorney-General, having a house in Chancery Lane, and a villa at Streatham, he always travelled between them in a coach and six. When I was At-

torney-General I had the pleasure of travelling, when I chose, on the top of a stage coach or in an omnibus—in which I met a ducal member of the Cabinet.

<sup>f</sup>. See Chatham Correspondence, iv. 322.

"The babe that was unborn might rue  
The *speaking* of that day."

It mainly conduced to the civil war which soon followed, and to the dismemberment of the empire,—by exciting overweening arrogance on one side, and ranking revenge on the other. Had Franklin been soothed, instead of being insulted, America might have been saved. As yet, though eager for the redress of the wrongs of his transatlantic brethren, he professed, and I believe he felt, respect and kindness for the mother-country, and a desire that all differences between them might be honourably reconciled. Being agent for the province of Massachusetts, and having got possession, by mysterious and probably unjustifiable means, of certain letters written by Mr. Hutchinson, the Lieutenant-Governor, and Mr. Oliver, the Chief Justice of that province, to Mr. Whately, who had been private secretary to George Grenville,—recommending the employment of a military force for the suppression of the discontents there,—he transmitted them to the Speaker of the House of Assembly, and, being publicly read, they were considered evidence of a conspiracy to destroy the liberties of the colonies. A petition to the King was unanimously agreed to, praying for the recall of the Lieutenant-Governor and the Chief Justice. This petition was very imprudently referred to a committee of the Privy Council, that its allegations might be openly discussed. The Executive Government ought quietly to have disposed of it, either by refusing its prayer, or by transferring the parties complained against to some other sphere, where their services would be more available for the public good: but it was thought that a glorious opportunity had occurred of publicly inveighing against the colonists, and of heaping odium on their champion.

As the day for the hearing approached, public expectation was raised to a higher pitch than it had been by any juridical proceeding in England since the trial of Sacheverell. The scene was the Council-chamber at the Cockpit, Whitehall. Thirty-five privy councillors attended,—with Earl Gower, the Lord President, at their head. Accommodation was made near the bar for Burke, Priestley, Jeremy Bentham, and other distinguished strangers, and the adjoining rooms and passages were crowded by an innumerable multitude, who could only catch some distant murmurs of the vituperation, and inquire from time to time what was likely to be the result. We have,

from Jeremy Bentham, a curious description of the apartment, and the appearance of him who was beheld of all beholders:—"The president's chair was with the back parallel to and not far distant from the fire; the chimney piece, projecting a foot or two, formed a recess on each side. Alone, in the recess, on the left hand of the president, stood Benjamin Franklin, in such a position as not to be visible from the situation of the president, remaining the whole time like a rock, in the same posture, his head resting on his left hand, and in that attitude abiding the pelting of the pitiless storm." Dunning and Lee stood at the bar as counsel for the petitioners. Wedderburn, as Solicitor-General, alone attended for the Crown, or, more properly speaking, as assessor to the Privy Council. "His station was between the seats of two of the members on the side of the right hand of the Lord President."<sup>g</sup>

Dunning and Lee began, but their speeches are entirely lost; they are said to have spoken feebly, being ashamed (as some insinuated) of the manner in which the letters had been obtained and made public.<sup>h</sup>

Wedderburn did not stand in need of the stimulus of a fierce attack; but came fully charged with venom, which he had long been distilling. We have by no means a full report of his speech, but some of the most striking passages of it have been handed down to us. "The present question," he observed, "is of no less magnitude than whether the Crown shall ever be permitted to employ a faithful and steady servant in the administration of a colony? His Majesty, in appointing Mr. Hutchinson, followed the wishes of his people; no other man could have been named in whom so many favourable circumstances concurred to recommend him. A native of the country, whose ancestors were among its first settlers—a gentleman who had for many years presided in the law courts—of tried integrity—of confessed abilities—and who has long devoted himself to the study of the history and constitution of the country he was to govern. Against him the petitioners do not attempt to allege one single act of misconduct during the four years he has ruled over them. So the Chief Justice, equally remarkable for his learning and his integrity, stands unaccused and unsuspected of any malversa-

<sup>g</sup> Jeremy Bentham. When the Attorney and Solicitor-General now attend as assessors to the Privy Council, they are placed at a small table at the upper end of the great

table at which the members sit.

<sup>h</sup> See a letter from Priestley, *Monthly Magazine*, Nov. 1802. 2 Adolph. 41.

tion in his office. Yet both are to be punished by a disgraceful removal. Let me examine the only ground which my learned friends have taken in support of the petition. Abstaining from any charge of official misconduct, they have read to your lordships the Assembly's address,—they have read the letters, and they have read the censures passed upon them. But having then contented themselves with praying the dismissal of these meritorious servants of the public, they frankly admit to your lordships that there is no cause to try; there is no charge—there are no accusers—there are no proofs. They simply say, 'the Lieutenant-Governor and the Chief Justice should be censured, because they have lost the confidence of those who complain against them.' This is so very extraordinary a proceeding that I know of no precedent, except one; but that, I confess, according to the Roman poet's report, is a case in point:—

“Nunquam, si quid mihi credis, amavi  
Hunc hominem. Sed quo cecidit sub crimine? Quisnam  
Delator? Quibus indicibus? Quo teste probavit?  
Nil horum—verbosa et grandis epistola venit  
A Capreis—bene habet: nil plus interrogo.”

Having examined the letters, and contended that they were harmless, and at all events that they were private, so that they could not possibly be made the foundation of a charge of public misconduct, he said:—“On the part of Mr. Hutchinson and Mr. Oliver, however, I am instructed to assure your lordships that they feel no spark of resentment even against the individuals who have done them this injustice. They are convinced that the people, though misled, are innocent. If the conduct of a few ill-designing men should provoke a just indignation, *they* would be the most forward, and I trust the most efficacious, solicitors to avert its effects. They love the soil, the constitution, the people of New England: they look with reverence to this country, and with affection to that. For the sake of the people they wish some faults corrected, anarchy abolished, and civil government re-established. But these salutary ends they wish to promote by the gentlest means. They wish no liberties to be abridged which a people can possibly use to its own advantage. A restraint from self-destruction is the only restraint they desire to be imposed upon New England.” Wedderburn then, as the *coup-de-grace* to his victim, whom he thought he had almost sufficiently tortured, proceeded to consider the manner in which the

letters had been obtained and published. "How they came into the possession of any one but the right owners," he said, "is still a mystery for Dr. Franklin to explain. He was not the rightful owner, and they could not have come into his hands by fair means. Nothing will acquit Dr. Franklin of the charge of obtaining them by fraudulent or corrupt means, for the most malignant of purposes,—unless he stole them from the person who stole them. This argument is irrefragable. I hope, my lords, you will mark and brand the man, for the honour of this country, of Europe, and of mankind. Private correspondence has hitherto been held sacred in times of the greatest party rage, not only in politics, but in religion. The betrayer of it has forfeited all the respect of the good, and of his own associates. Into what companies will the fabricator of this iniquity hereafter go with an unembarrassed face, or with any semblance of the honest intrepidity of virtue? Men will watch him with a jealous eye—they will hide their papers from him, and lock up their escritaires. Having hitherto aspired after fame by his writings, he will henceforth esteem it a libel to be called a *man of letters*—'*homo trium literarum*.'"<sup>c</sup> But he not only took away these papers from one brother,—he kept himself concealed till he nearly occasioned the murder of another. It is impossible to read his account, expressive of the coolest and most deliberate malice, without horror.<sup>d</sup> Amidst these tragical events, of one person nearly murdered—of another answerable for the issue—of a worthy governor hurt in the dearest interests—the fate of America in suspense—here is a man who, with the utmost insensibility of remorse, stands up and avows himself the author of all. I can compare him only to Zanga in Dr. Young's REVENGE—

. . . . . 'Know, then, 't was I.  
I forged the letter—I disposed the picture—  
I hated, I despised—and I destroy.'

<sup>c</sup> *Fur*, a thief.

<sup>d</sup> This refers to a duel in Hyda Park between a Mr. John Temple, of Boston, accused of having been instrumental in procuring and publishing the letters, and Mr. Wm. Whately, a brother of the gentleman to whom they were addressed, and from whose effects they were supposed to be purloined. Thereupon, Dr. Franklin wrote a letter to a newspaper, in which he said, "I think it incumbent on me to declare (for the prevention of future mischief) that I alone am the

person who obtained and transmitted, to Boston the letters in question. They were not of the nature of *private letters between friends*: they were written by public officers to persons in public stations, on public affairs, and intended to procure public measures; they were therefore handed to other public persons who might be influenced by them: their tendency was to incense the mother country against her colonies, and, by the steps recommended, to widen the breach:—which they effected."

I ask, my Lords, whether the revengeful temper, attributed by poetic fiction only to the bloody-minded African, is not surpassed by the coolness and apathy of the wily New Englander?"

The effect of this invective upon the hearers was greater than almost anything we read of in the history of English eloquence. Says Jeremy Bentham, "Without any prejudice in favour of the orator, I was not more astonished at the brilliancy of his lightning than astounded by the thunder that accompanied it." We can easily conceive the delight of the assembled Privy Councillors, who had been selected and summoned on this occasion—from their known hatred of the discontented Americans, and their impatient desire to coerce them;—but, without very strong testimony, we could not give credit to the stories circulated of their demeanour,—considering that they were sitting as judges, and that at least the *affectation* of impartiality might have been expected from them. "Nevertheless," says Dr. Priestley, "at the sallies of his sarcastic wit, all the members of the Council (the President himself, Lord Gower, not excepted) frequently laughed outright. No person belonging to the Council behaved with decent gravity except Lord North, who, coming late, took his stand behind a chair opposite me." Some accounts represent that they actually cheered him, as if they had been listening to a spirited party-speech in Parliament. Lord Shelburne, in a letter to Lord Chatham, writes—"The indecency of their behaviour exceeded, as is agreed on all hands, that of any committee of election;" and Charles Fox, in the debate on the renewal of the war in 1803, warning the House not to be led away by the delusive eloquence of Pitt, reminded them "how all men tossed up their hats, and clapped their hands in boundless delight, at Mr. Wedderburn's speech against Dr. Franklin, without reckoning the cost it was to entail upon them." <sup>s</sup>

The Committee of the Privy Council instantly voted "That the petition was false, groundless, vexatious, and scandalous, and calculated only for the seditious purpose of keeping up a spirit of clamour and discontent in the province." The King

\* Letter from Dr. Priestley, *Monthly Magazine*, Nov. 1802.

† Chatham Correspondence, iv. 322.—Lord Shelburne adds, "The scurrilous invective was occasioned, as Dr. Franklin says, by some matter of animosity; as Mr. Wedder-

burn says—by his attachment to his deceased friend Mr. Whately, the publication of whose correspondence contributed to inflame the Assembly to their late resolutions."—*Letter*, dated 3rd Feb. 1774.

<sup>s</sup> Lord Brougham's *Characters*, vol. i. 74.

in Council confirmed the report, and Dr. Franklin was dismissed from the office of Deputy Postmaster-General in America. He himself had sat during the whole of the proceedings before the Privy Council, although all eyes were directed upon him, in the position in which Jeremy Bentham has described him,—without moving a muscle. He pretended to despise the vituperation as “the idle air one hears but heeds not”—saying, “It was a matter of indifference to him that a venal lawyer was hired and encouraged to abuse the petitioners and their agent in the grossest terms scurrility could invent—and that a man so mercenary, if well feed, would have been equally loud in his praise, or in praise of the Devil.” But the speech which Franklin thus pretended to despise had rankled in his heart. What secret vow he made he never revealed; but, years afterwards, on the termination of the war by which the independence of America was established, being then Ambassador of the United States at Paris, he signed the articles of peace in the identical dress which he had worn when inveighed against by Wedderburn. “He had stood,” says Dr. Priestley, “conspicuously erect during the harangue, and kept his countenance as immovable as if his features had been made of wood. But the suit of ‘Manchester velvet,’ which he then wore, was again put on at the treaty of Paris. These clothes had never been worn since or afterwards. I once intimated to Dr. Franklin the suspicion which his wearing those clothes on that occasion had excited in my mind, when he smiled, without telling me whether it was well or ill-founded.”

Wedderburn must be severely condemned for thus pandering to the low passions of his countrymen, instead of honestly trying to enlighten them. So objectionable was this proceeding, which he probably prompted, and in which he played the principal part,<sup>a</sup> that Adolphus, the almost indiscriminate apologist of all the measures of George III.’s reign, is driven to confess that “the character of the inquiry and the dignity of the tribunal to whose investigation it was submitted were not duly considered. Ministers, taught by experience, ought

<sup>a</sup> “Lord Haddington, who witnessed the scene in the Privy Council, ascribed the onslaught (the impolicy of which every one felt at the time) to some passionate quarrel that had occurred shortly before between W. and F. Many years after, Lord Loughborough being asked whether he had not taken up

some violent personal dislike to Franklin, admitted it; but he was blindly keen on the American question, and political feeling may account for all the vituperation he bestowed upon the Bostonian.”—*Lord Commissioner Adam.*



to have known the degradation which they must inevitably incur when they elevated an individual into the rank of a personal opponent. Dr. Franklin, who had recently completed his sixty-seventh year, who was known and honoured in the most eminent philosophical and literary societies in Europe, sat, with his grey unadorned locks, a hearer of one of the severest invectives that ever proceeded from the tongue of man; and an observer of a boisterous and obstreperous merriment and exultation, which added nothing to the dignity of his judges. He had sufficient self-command to suppress all display of feeling; but the transactions of the day sunk deeply into his mind, and produced an inextinguishable rancour against this country which coloured all the acts of his subsequent life, and occasioned extensive and ever-memorable consequences.”<sup>i</sup>

Although the present exultation was unbounded, a day of repentance and humiliation was to follow:

*“Turno tempus erit, magno cum optaverit entum  
Intactum Pallanta, et cum spolia ista diemque  
Oderit.”*

Meanwhile, to keep up the annoyance and irritation, Wedderburn caused a bill in equity to be filed against Franklin, under pretence of praying an account of the profits which he had made by publishing the letters from Boston, but with the real view of compelling him to discover on oath from whom and by what means he had received them. In his answer he swore “that he neither caused nor was privy to the printing of the letters, and that he had not made nor ever intended to make any profit by them.” To the rest of the discovery he put in a demurrer, which, on the argument of the Solicitor-General, was overruled by Lord Bathurst; but this petty warfare in the Court of Chancery was interrupted by the glare of conflagrations and the booming of artillery on the western shore of the Atlantic.

It happened that immediately after the judgment of the Privy Council, by which the giddy multitude, comprehending persons in the highest station, thought that the pretensions of the Americans were for ever crushed, and that they must be brought into a state of quiet, if not contented, subjugation, news arrived of the combination at Boston against the consumption of taxed tea, of the seizure of several cargoes of this

commodity, and of the burning of an English ship of war sent to enforce regulations for the levying of the tea duty.<sup>k</sup> A royal message was immediately sent to both Houses of Parliament, demanding measures of vengeance. The "Boston Port Bill," and the "Bill for the improved Administration of Justice in the Province of Massachusetts Bay," were introduced, and warmly supported by Wedderburn. In answer to the argument that these bills violated charters, he boldly said: "It will be found necessary to disregard their charters if you mean to restore subordination among them; but I hope and firmly wish that even the idea of your authority being known to them will at once prevent the exertion of it. I agree with the honourable gentleman (Colonel Barré) that conciliation is desirable; but while you hold out the olive-branch in one hand, you must grasp your sword with the other. Peace will be established on proper principles when there is a power to enforce it; and your authority once established, I would then drop the point of the sword, and stretch out the olive-branch to the vanquished." "The learned gentleman's speech," exclaimed Burke, "demands blood; the sword must convince the Americans, and clear up their clouded apprehensions! The learned gentleman's logical resources surely desert him if he is obliged to call such a coarse argument as an army to his assistance. Not that I mean to cast any personal reflection upon him: I always respect, and sometimes dread, his talents."<sup>m</sup>

On one clause of the Massachusetts Bill, Wedderburn gained a decided advantage over his opponents. This suspended the power of bringing "an appeal of murder"—a proceeding which, according to the common law of England, might be resorted to by the heir of the deceased after an acquittal by a jury on a prosecution in the name of the King,—in which the trial was by BATTLE, and in which, upon a conviction, the Crown had no power to pardon. Such is the force of faction in perverting the understanding and the feelings, that an outcry was now made against the Government, as if a resolu-

<sup>k</sup> The Gaspée. It is hardly possible to conceive that the continent of North America could have permanently continued an appendage of our little island, and the actual event is perhaps better even for us; but had it not been for the infatuated resolution to persist in this wretched tax for the purpose of showing that we possessed a power which all parties now agreed could not be benefi-

cially exercised, the connection between the two countries might have long continued—till at last they amicably separated. It required a long course of wanton irritation to root out the disposition of the vast mass of the colonists in favour of the mother country, and to overcome their reluctance to abandon their regular industrial pursuits.

<sup>m</sup> 17 Parl. Hist. 1207.

tion had been formed entirely to abolish trial by jury. "I rise," said Dunning, "to support that great pillar of the constitution, the appeal for murder: I fear there is a wish to establish a precedent for taking it away in England as well as in the colonies. It is called a remnant of barbarism and Gothicism. The whole of our constitution, for aught I know, is Gothic. Are you, then, to destroy every part of that Gothic constitution, and set up a Macaroni one in its stead? Under a system of ministerial despotism, every institution is denounced which may tend to support our rights and liberties. I wish, Sir, that gentlemen would be a little more cautious, and consider that the yoke we are framing for the despised colonists may be tied round our own necks." Nay, the grave, the enlightened, the didactic, the philosophical Edmund Burke, said, "There is nothing more true than that man has given up his share of the natural right of defence to the state, in order to be protected by it. But this is a part of a system of jurisprudence which ought to be viewed as a whole. If there is an appeal for rape and robbery, you ought to have one for murder. If this branch of our privileges is lopped off, you may soon lay the axe to the root of the tree in our own country. I allow that judicial combat was part of this appeal—which was superstitious and barbarous to the last degree; yet I cannot consent that the subject should be dealt with piecemeal—and that any thing valued by our ancestors should be taken away from one part of his Majesty's subjects while it is retained by another."

*Mr. Solicitor-General Wedderburn.*—"Sir, the taxation of America was once denounced as a grievance by gentlemen opposite; but that seems to have sunk into insignificance in their eyes compared with the grievance of suspending in that country trial by battle in cases of murder. The apprehension lately professed by them of the establishment of tyranny at home by the arbitrary acts of the House of Commons, is absorbed in the danger to our liberties by a similar privation. They allow that the appeal of murder is only an effort of private revenge—that it may lawfully be stopped at any time by the appellant on receipt of a sum of money—and that, if it proceeds, the appellee, or accused, by throwing down his glove, is entitled to have his guilt or innocence determined by a deadly combat between the parties or their champions. Certainly in times not very remote the Judges of the Court of Common Pleas did seat themselves on their tribunal in Tothill Fields to see a Writ of Right so determined. But the public was scandalised—the fight was stopped—and no attempt has been made since the reign of Elizabeth to resume this mode of elucidating truth. I must be allowed to

doubt whether it is an essential part of our constitution. What a blow, then, did our constitution sustain when the *ordeal* fell into disuse, and women no longer proved their chastity by walking blindfold over burning ploughshares! But I should in vain try to reconcile those gentlemen to the proposed alteration of the law if it were to be permanent, and I can only try to soften their opposition by reminding them that the act is meant to be temporary; so that, at no distant day, they may hope to see their fellow-subjects in America restored to the right which they enjoy, and which patriots in England so highly prize."

Mr. Fox came to the rescue of his friends. He said that he was for abolishing appeals in all criminal cases, and he allowed that the circumstance of their taking away the power of pardoning from the Crown was an insuperable objection to them—but he said he condemned the partial, pitiful legislation of this clause, and he should vote against it. The clause was withdrawn upon the understanding that there should be a general act upon the subject, according to the suggestion of Mr. Fox<sup>a</sup>—but the law continued unaltered till the year 1819, when, an appellee having thrown down his glove on the floor of the Court of King's Bench, and demanded trial by battle, all such appeals were swept away.<sup>b</sup>

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## CHAPTER CLXVII.

CONTINUATION OF THE LIFE OF LORD LOUGHBOROUGH TILL HE WAS  
MADE CHIEF JUSTICE OF THE COURT OF COMMON PLEAS.

In the beginning of the following year, notwithstanding the  
Feb. 2, measures of coercion resorted to, the exasperation  
1775. and the courage of the Americans rose; they prepared for resistance, and civil war was clearly impending. In the grand debate which then took place on Lord North's motion for an address to the King, to assure him of the support of Parliament in putting down the rebellion, Wedderburn answered Burke, and he still made use of very intemperate language. He treated rather lightly the distress which

<sup>a</sup> 17 Parl. Hist. 1291.

<sup>b</sup> 59 George 3, c. 46. See Ashford v. Lord Chancellor Cowper, *antè*, Vol. V. Thornton, 1 Barnewall and Alderson, 405; and the proceedings against the brother of

had arisen from the interruption to trade in consequence of the measures of Government in America. "In the present instance," said he, "interests are at stake of much greater magnitude. The power of Parliament is defied; a portion of his Majesty's subjects, although they have not yet formally cast off their allegiance, are actually in open rebellion. An enemy in the bowels of the kingdom is surely to be resisted, although manufactures should be interrupted and commerce should languish. The integrity of the empire is more to be regarded than the accumulation of wealth. The question is not now how we may derive most advantage from our American colonies, but whether we are to keep possession of them. The sufferings of individuals are nothing, compared with the safety of the state." <sup>p</sup> Government then had a majority of 304 to 105.

Wedderburn's reckless advocacy may be conceived from the following account of his speech, when, after the <sup>Feb. 20,</sup> affairs of Lexington and Bunker's Hill, regular <sup>1776.</sup> hostilities had been carried on, and Mr. Fox moved for inquiry into the causes of the ill success of the British arms:—"The Solicitor-General defended administrations throughout, not only what they had already done, but every action of theirs, and every consequence arising from their conduct. He insisted that the war was just and expedient, that the ministers abounded with wisdom, and the army and navy in military prowess." <sup>q</sup>

When Lord John Cavendish made his motion for "a revival of all acts of parliament by which his Majesty's subjects in America think themselves aggrieved," Wedderburn still urged that force was the only remedy. "Take the sword," said he, "out of the hands of the governing party in America, and I have not a doubt that the country will return to its allegiance with as much rapidity as it revolted. Is it possible to imagine that the Americans themselves can sincerely wish for a continuance of their present government? From freemen they have become slaves. The Congress does not govern America, but tyrannize over it. The arbitrary power of imprisonment exercised there, is inconsistent with every idea of liberty or law. The freedom of the press is annihilated, nor is even the sacredness of private correspondence respected; nay, destruction hangs over the man who even in private conversation ventures to express a sentiment distasteful to those

who, for the moment, have usurped supreme power. A due regard for the rights of your fellow-subjects imperatively requires the employment of troops to enable the oppressed Americans safely to avow their opinions, to return without danger to their duty, and to recover the blessings of the British constitution." It would appear, from the commencement of Burke's answer, that, on a recent occasion, for once Wedderburn's nerve had failed him :—" Rejoiced I am, Sir, that the learned gentleman has regained his voice, if not his talent. He would not, or could not, stand up the other night to my honourable friend who inflicted on him such grievous wounds. He lay like Milton's fallen angel, prostrate 'on the oblivious pool.' Why, Sir, would he not still remain silent instead of attempting to answer what, in truth, was unanswerable? But the learned gentleman has now called to his assistance the bayonets of 12,000 Hessians, and, as he thinks it absurd to reason at present with the Americans, he tells us, that by the healing, soothing, merciful ministrations of German mercenaries, their understandings will be enlightened, and they will be enabled to comprehend the subtleties of his logic." The Opposition on this occasion could only muster 47 votes.\*

But, alas! arrived the disastrous news of the surrender of  
 Nov. 22, General Burgoyne and his army at Saratoga. Still the  
 1777. tone of the Solicitor-General was undaunted. In the debate on the Address, at the commencement of the next session of parliament, he scorned the notion of conciliation, saying, "The object of the Government should be to oblige the rebels to lay down their arms, and then to treat of conditions: not a hundredth part of America is in arms; to those armed, however, it is necessary to talk with arms in hand; the honour of Britain requires unconditional submission from insurgent subjects." He inveighed against the bitterness of invective that marked the modern oratory of the House, and wished that gentlemen in opposition would learn to gloss over with more decency their incentives to rebellion. Burke ironically praised "the learned gentleman's humanity, for first cutting the throats of the Americans, and then wishing to truck up a conditional peace with them."†

\* 18 Parl. Hist. 1431—1448.

† 19 Parl. Hist. 444. Although Wedderburn considered himself bound in parliament to be a "thick and thin" defender of Minis-

ters, no one was more sensible of their misconduct. In letters written shortly before this to his hosom friend, Mr. Eden (afterwards Lord Auckland), he says, "I am per-

On a subsequent day Wedderburn spoke in a better spirit, which in ancient Rome might have gained him thanks that he did not despair of the republic: "The calamity, he could not deny, was great; but he could not infer from it that our condition was hopeless. We had often received checks, but the spirit of the nation had always made us rise superior to our distresses: an exertion of that spirit would, on the present occasion, infallibly rescue us from danger. Britons ever showed magnanimity in distress, and certain victory was the consequence. He wished, therefore, that gentlemen would not be cast down; before now as great misfortunes had happened to us, from which we reaped substantial advantages. As to the fact of a whole army surrendering, which had been described as unprecedented, the annals of this country had furnished a remarkable instance of it in the glorious reign of Queen Anne, when, after the battle of Almanza, General Stanhope was obliged to capitulate, with the whole of the British forces under his command. This, however, did not damp the ardour of the British nation, but urged them on to greater and more successful exertions."

It would appear that about this time Wedderburn had given personal offence, in debate, to Edmund Burke, who had required and received an apology. There is no allusion to the affair in print, but the following letter is found among the Rosslyn MSS. :—

"SIR,

"Mr. Fox has informed me of your obliging desire of seeing me, and giving any farther explanation which might be necessary to complete that you had given in your letter of last night. I am very sensible of your politeness and civility on this occasion. But as the letter itself was perfectly satisfactory, I do not wish you to give yourself any

suaded that the suspicion in America of instructions that limit the General is totally false; but surely the want of authority to direct the conduct of a General, if the indecision of his own judgment makes it necessary to direct him—the giving unlimited power without any confidence—the rewarding misconduct—are errors in system that leave us no right to blame fortune." . . . .

'The peculation in every profitable branch of the service is represented to be enormous, and, as usual, it is attended with a shocking neglect of every comfort to the troops. The hospitals are pest-houses, and the provisions

served out are poison; those that are to be bought, are sold at the highest prices of a monopoly. It hath long been a subject of deep regret with me that Amherst is suffered to remain at home, and I am persuaded he will be sent out still,—six months too late." The misfortunes of the war preyed upon his mind. From Bath he writes, "I could do vastly well here if I could get out of the sound of the word 'America,' and if I did not dream of it while I go to sleep. The waters cure all other complaints."

' 19 Parl. Hist. 539.

further trouble about the matter ; and hope we shall both of us banish it entirely from our thoughts.

“ I am, with great esteem and regard,

“ Sir,

“ Your most obedient and humble servant,

“ Dec. 4, 1777.”

“ EDM. BURKE.

Wedderburn now refused the office of Chief Baron of the Exchequer, because it was not to be accompanied with  
A.D. 1778. a peerage, and although attempts were made to soothe him, by other offers, he seems to have been very much dissatisfied with the manner in which he was treated by the Prime Minister. When the offer was first made to him through Mr. Eden, he wrote back :—

“ My temper, you know, does not lead me to be over-anxious about gain, and my ambition has hitherto been more gratified by serving my friends than myself. You may possibly recollect that you foretold, when I accepted my office, that I should not advance my own situation by it. I imagined that the proof I then gave, and those I should continue to give, of attachment to the connection I was forming, would defeat your prophecy. It has turned out differently. In two years I found myself unsupported, and soon afterwards the indirect object of a long-concerted attack, which I was left to withstand as I could. Neither the one instance nor the other abated my zeal, and you know perfectly that I never, under any circumstance of even recent disgust, entertained the least idea of a cabal or of separation from Lord North, but have always wished his influence and authority to be extended and maintained. I must confess to you, however, that neglect has damped my zeal exceedingly, and nothing but distress and difficulty are likely to raise it to its former pitch. In this situation I should act very imprudently, however disgusting retreat may at first seem to an eager mind, if I did not take an opportunity of extricating myself from a position where danger is the only pleasure in possession or in prospect.”

After some further negotiation, and an additional *solatium* offered to him, he writes to Mr. Eden :—

“ If Lord North, having found me sometimes troublesome, has any degree of indisposition towards me, or even if he is indifferent about me, I hold it to be better to thank him, and to decline the civility he offers. In politics, it is almost the rule of the game to get what you can, and begin upon a new score ; but it is a game that neither my temper nor a dread of what I should feel to be a just reproach will allow me to play. If I had no aversion to it, you ought, as a friend of Lord North, to apprise him of the disadvantage : merely to get rid of the present embarrassment, with an opening left for a future misunderstanding, is not



worth to him half what he offers. I will now suppose that Lord North's sentiments of me are as friendly as his conversation, and that he is really disposed to treat me as a person attached to him, whose interest he ought to promote. The case will then stand thus:—A judicial office of a decent rank actually vacant,—an offer made to the Attorney-General, and refused,—the same offer proposed to be made to me, but that intention defeated, because the same promise cannot accompany the second offer,\*—my situation, already not advantageous, somewhat the worse for this event, and Lord North proposes to make it up in some other way. In the first place, I have no inclination to accept the vacant office without any prospect of succeeding to one of those that have been usually attended with the only circumstance that in my estimation makes one such place better than another,—a place in the legislature.\* At my age it would be too mortifying to renounce that idea, and I presume Lord North does not wish that I should yet disqualify myself. I should certainly feel myself much strengthened by the acquisition of an office (provided it lay on this side the Tweed) that would enable me to extend my view beyond my profession, without interrupting me in the pursuit of it. If I am not to rely upon Lord North's friendship, let the matter rest as it does, and an end be put to the appearance of connection at any time when it can be done with the least inconvenience to yourself or any other of my friends. Whatever disadvantage there is in quitting the pretensions that office alone gives, I will submit to that disadvantage if it is only to affect myself. If Lord North seriously wishes to attach me to him as a friend (and you must know better than I can how that point stands), I have then nothing to ask and no terms to make. He will be as much disposed to serve me as I could wish; and if he thinks this a proper occasion to demonstrate his friendship in any manner, I shall receive it with pleasure as a favour that I may be able to return. I will make no bargain nor desire any promise, for with a friend I would rather be obliged to his inclination to serve me than to the constraint of an engagement. In either event I have no wish to keep the present vacancy in suspense one moment. It is a very material object that it should be properly supplied. The 'Customs and Excise' will pay for the folly of a Chief Baron,<sup>†</sup> and it is neither expedient nor handsome to leave it open to such solicitations as I hear are used to obtain it."

An accommodation was brought about by the promise of a sinecure and the highest judicial promotion in the wake of Thurlow. While Wedderburn held his present office, he shone

\* I presume that a peerage had been offered to Thurlow in respect of his having been long Attorney-General, while it was refused to the Solicitor.

† He refers to the chiefships of the King's Bench and Common Pleas. The only Chief Baron who has been a peer is Lord Abinger.

‡ At that time, it seems to have been con-

sidered that the only business of the Chief Baron was to try smugglers. When Sir W. Garrow was Attorney-General, he claimed this office on the death of Chief Baron Thomson, but Lord Eldon insisted on the patronage as belonging to the Great Seal, and showed that no Attorney-General had been made Chief Baron for hundreds of years.

forth chiefly as a politician, and we do not hear much of his efforts at the Bar. However, he was in the full lead in the Court of Chancery against Thurlow, and, by artful statement of facts, he was supposed to have more influence over the mind of Lord Bathurst than that formidable rival could acquire by a more confident manner and a deeper knowledge of law.<sup>a</sup> He assisted, as counsel for the Crown, in the prosecution of John Horne Tooke for a libel, but he contented himself with examining a witness, to prove that the MS. from which it was printed was in the handwriting of the defendant, and after the conviction he did not join in praying that the infamous punishment of the pillory might be inflicted.<sup>a</sup> He contrived to avoid being mixed up in the controversy which Thurlow conducted fiercely for so many years, respecting the rights of juries on trials for libel; and at no period of his career, till the breaking out of the French Revolution, did he show himself unfriendly to the liberty of the press. His best forensic argument was on the trial before the House of Lords of the Duchess of Kingston, for bigamy, to prove that the sentence she had collusively obtained in the Ecclesiastical Court against the validity of her first marriage was no bar to the prosecution. This was distinguished by lucid arrangement, cogent reasoning, and a scientific acquaintance with the great principles of juridical procedure,—and it may now be studied both with pleasure and advantage.<sup>b</sup>

\* "As an advocate, his merit is very considerable. He is patient, attentive, constant to his business, and speaks with judgment, force, and zeal. He discerns very readily the strong and weak parts of his cause, and accordingly dwells on or hastes over them. He has practised constantly in the Court of Chancery, as the court in which his knowledge of the civil law would be of most use to him; and has obtained there a degree of eminence, in which, by reason of the Attorney-General's indolence, he at present stands without a competitor. He is now warmly supported by the first influence in the kingdom, namely, those who are at the head of that set of men who term themselves 'King's friends;' and it is only because the pretensions and interest of this gentleman and of the Attorney-General are equally balanced, that they have both kept their places, and that the present Chancellor has been suffered to keep the Seals so long."—*Extract from a Letter printed in the Public Adver-*

*tiser*, March 3, 1778, and signed "Observer."

<sup>a</sup> 20 State Trials, 651, 1380. *Ante*, Vol. VII., Ch. CLVI.

<sup>b</sup> 20 State Trials, 464. The whole of it is too close and connected to admit of any extract being made of it; and it has the merit of great severity of composition—avoiding even both proemium and peroration. The following is a very interesting account of this proceeding, by the Lord Justice Clerk Hope, from the narrative of his uncle, the late Earl of Haddington:—"Lord H. always spoke of W.'s oratory in the Duchess of Kingston's case as the *most accomplished* he ever heard. The case, as is well known, was got up by the Duchess herself, to show herself off, and attract notoriety after her long absence. Of course, the result was necessarily apparent to every one from the first. The scene was the great fashionable spectacle of the day, and attracted a great concourse. W. treated the whole affair ex-

Immediately upon the close of the session, in June 1778, Thurlow received the Great Seal, and Wedderburn succeeded him as Attorney-General.<sup>a</sup> This office he held two years, exercising its invidious functions with forbearance and mildness. Notwithstanding the licentious publications which now came forth, such as "Resistance no Rebellion," in answer to "Taxation no Tyranny," he wisely filed no *ex-officio* information for libel; and his Excise and Customs prosecutions in the Exchequer were allowed to be conducted only with a view to punish frauds on the revenue, and to protect the fair trader.

He had to conduct one very important prosecution in the Court of King's Bench, which had been directed by the House of Commons against Mr. Stratton and other members of the Council of Madras for deposing Lord Pigot from the Government of that presidency. His opening speech, and his reply, detailing and commenting upon very complicated transactions, were exceedingly able; but the case is now chiefly memorable for having called forth one of the earliest displays of the extraordinary eloquence of Erskine. The

actly as the Duchess intended it to be, a useless and ostentatious exhibition. He neglected no part of the legal argument as to the sentence of the Ecclesiastical Court (as the report showed), but made that quite subordinate to the occasion of exalting himself, and eclipsing in the spectacle the Duchess herself. In this he completely succeeded. Thurlow was coarse, vehement, and full of zeal; and on the other side, the civilians laboured away as if any thing could follow out of the affair but the laugh in which it all ended. W. played with the whole matter—quizzed the Duchess inimitably, and with infinite wit—jeered Thurlow—bantered Dunning and the civilians, and delighted the fine gentlemen and ladies who attended; and the very result of the solemn farce was what two of the persons acting in it intended,—that all London talked of the Duchess's splendid figure and appearance for her age, and of W.'s wit, eloquence, and superiority of public talent."

<sup>a</sup> It would appear that shortly before this he had met with a great mortification in not being appointed to a sinecure, which he conceived that Lord North had promised him, and which was given to Mr. M'Kenzie. He writes to Mr. Eden: "If Lord North doubts my attachment to him after the many proofs

he has had of it, your testimony or my declaration would be of little use to demonstrate it. But I am persuaded he is convinced of it, and upon that supposition I cannot conceive a reason for his treatment of me, except an opinion that I would take it very patiently. Now, though my attachment to Lord North has been very much marked, yet I flatter myself it hath not discovered itself to be pointed either towards his office or my own, nor am I conscious of any feature in my character that should distinguish me as very liable to submit to ill-usage. I have some curiosity, therefore, to know the *ratio suavioris* for cancelling an engagement to me that had been publicly known for years,—in complaisance to Col. Murray's importunity. If you can tell me any sufficient reason for not only the unkind, but humiliating, neglect Lord North has made me feel upon this occasion, I shall endeavour to put up with it; but if you can find none, I must then beg the favour of you to acquaint him that I have been too much, and too warmly, his friend to sink down quietly into the humble servant of his office." Mr. Eden brought about a reconciliation, which was much facilitated by the approaching vacancy in the Attorney-Generalship.

defendants being found guilty, Mr. Attorney, in obedience to his instructions, pressed for a sentence of imprisonment; but the Court let them off with a fine of 1000*l.* a-piece—to the high dissatisfaction of Edmund Burke, who repeatedly animadverted in the House of Commons on the impunity thus held out to outrages in India.<sup>d</sup>

While Attorney-General, Wedderburn had the merit of assisting in the first relaxation of the Roman Catholic penal code in Ireland, and of co-operating on this subject with men opposed to him in general politics, although I am afraid that, in his old age, factious and selfish motives carried him over to the side of intolerance. Thus he now wrote to Edmund Burke:—

“I suspect the passage of the Papist bill<sup>e</sup> will not be so smooth as I wish; and that I shall be obliged to break the silence I meant to observe, and write something upon the test. You can, I know, and I hope without much trouble to yourself, refer me to chapter and verse for all that part of ecclesiastical history that regards our tests. Was not occasional conformity once prevented in Ireland? Has it not since—and when—been connived at or permitted by some law? Is not the sacramental test at present merely used as in England, to qualify for acceptance, without any obligation to receive it during the possession of an office? And is there not, in fact, an act from session to session to allow further time to qualify? If the answer to my questions takes more of your time than my stating them does of mine, I do not mean to transfer from myself to you the trouble of consulting an index; but in subjects of daily observation I trust more to the knowledge of one informed by fact, as well as reading (especially when I know the accuracy of my informer), than I dare trust to my own researches.”

Wedderburn had now a weighty task in the House of Commons, where the defence of Government chiefly fell upon his shoulders,—with some occasional assistance from his old schoolfellow, Henry Dundas, become Lord Advocate for Scotland. Wallace, the new Solicitor-General, was the rough special pleader who had taken part with him in his *forray* on the Northern Circuit,—whom he had afterwards gratefully appointed his devil, and whom he now contrived to draw up after him as a law officer of the Crown; but who was wholly unfit to speak on any subject except a technical point of law.

The new Attorney-General took a prominent part in the

<sup>d</sup> 21 St. Tr. 1045—1294.

<sup>e</sup> To be introduced into the Irish Parlia-

ment—having been first submitted to the English law officers.

debate on the first night of the ensuing session. He urged that the House ought to be unanimous in prosecuting the contest with America, and referred to the conduct of Admiral Blake, who, though he disliked the measures of the Usurper, yet, being in the service of his country, called his crew together before he began an engagement, and told them, "however they might differ in opinion as to the first causes of the war, it was now their duty to see that they were not *fooled by the enemy.*"<sup>1</sup> In private, however, he was for conciliation. In a letter to Mr. Eden, written shortly before this time, he says,—

"The more I consider the subject (and I have thought of it constantly since I saw you), the more convinced I am of the necessity of a commission to hold out propositions to the Americans, and that the powers of that commission must be as extensive as it is possible in the nature of our government to make them. I would shut the door against no possible proposition; even the idea of a representation from America, if their minds in any corner of the continent should take that bias, should not be excluded; the power of offering places, honours, money, should be included. These things cannot be expressed either under the Great Seal or in any act of the legislature; and therefore the more open and general the commission is, the more it resembles the full powers of a minister, the more convenient I think it would be found in the execution."

But no such commission was issued till the close of the contest, when, under an act of parliament, our plenipotentiaries were authorised to treat with those of the United States of America for a treaty of peace.

In parliament Wedderburn stood forth to defend the principle on which the war with the colonists had been begun, and the manner in which it had been conducted; but I cannot afford more space for these discussions, although they must be ever interesting to the whole of the Anglo-Saxon race. The contest for American independence was substantially over, and England had to provide for her own safety against a conspiracy of European states that threatened her destruction. Franklin, now ambassador at Paris, instead of putting in an answer to Wedderburn's bill of discovery in the Court of Chancery, about the Boston letters, had induced the French government to enter into a treaty of alliance with the republic which he represented; and the combined fleets of France and Spain not only threatened our possessions in dis-

<sup>1</sup> 19 Parl. Hist. 1360.

tant parts of the world, but caused an alarm of immediate invasion at home.

To meet this exigency, the Attorney-General, as the organ of the Ministry, brought forward a measure of great vigour in a very extraordinary manner. One night, at twenty minutes past twelve o'clock, as the House of Commons was about to adjourn, he rose in his place, and, without any previous notice, moved "for leave to bring in a bill to suspend all exemptions from impressment into the navy, together with the right of those impressed to sue out a writ of habeas corpus for their liberation." This, in truth, was to authorise the Government, by a conscription, to man the navy with any portion of the inhabitants of Great Britain at their discretion. The arbitrary nature of the measure he did not attempt to disguise. He defended it on the score of necessity—urging that when the invasion of the soil of Britain was meditated by perfidious foes, it was proper to remove all legal impediments in the way of calling every man to the aid of the state,—to hold out encouragement to the willing,—and to compel the reluctant to join in defending their native land. He stated, that there were six or eight ships of the line ready for sea at Portsmouth, which were useless for want of sailors, and that they could not be manned if the power of impressment continued clogged with common law and statutable restrictions. "Will you, then," he asked, "continue these impediments—submit to an inferiority at sea—allow your men-of-war to rot in your harbours—and trust the existence of this country to the fate of a battle on shore? So confident does the Government feel in the co-operation of Parliament on this occasion, that I do not scruple to tell you, that the unrestricted impressment which this bill is to authorise is begun,—that I make this motion at this late hour, without notice, for the purpose of rendering the measure effectual,—and that I hope, by the suspension of standing orders, it may to-morrow be carried through all its stages." *Sir George Savile*.—"I must oppose the motion which is made in a manner so unprecedented, and I wonder the learned gentleman is not ashamed to avow that his reason is *concealment*—reducing the members of this House to act like midnight conspirators! Here, indeed, is vigour to make up for former supineness. The act is to be retrospective;—ministers by anticipation are actually putting it into execution,—and all the salutary forms of parliament are trampled upon, 'lest the public should be apprised of it.' The learned gentleman is

not here defending the errors of others. This must be his own measure. He alone could devise it—he alone could propose it. Would the learned gentleman not let one father, one husband, one brother, or one child escape in this general scene of oppression and injustice?" *Wedderburn*.—"The honourable gentleman may easily point out hardships suffered under the usual system of impressing seamen for the navy, but the suffering of a few must be disregarded for the public safety. In times of national misfortune like the present, much must be sacrificed without scruple, and much must be borne without repining. The inconvenience is temporary,—to save us from irremediable degradation and perpetual bondage. The personal obloquy attempted to be thrown upon myself I shall contentedly submit to, if thereby I can be of service to my country." This appeal silenced all further opposition. At one o'clock the bill was brought in, and read a first and second time. The following day it was sent to the Lords, and on the third day it received the royal assent.<sup>5</sup> The victory of Rodney was the consequence. Notwithstanding the faults of Lord North and his colleagues in commencing the American war, and still more in conducting it, we must in candour allow that they displayed great energy in repelling the aggression of France and Spain, and counteracting the machinations of the Northern Powers,—so that their successors were enabled to conclude a peace, safe, and not inglorious.

It would appear that *Wedderburn* had other rather wild schemes for relieving the country from its difficulties. Thus he writes to his friend, *Mr. Eden* :—

"A brother projector of mine, *Mr. Hart*, will call upon you to-morrow morning. He is possessed of a plan for an accommodation with the Americans, which he proposes to sell upon very reasonable terms. You have got mine gratis, and I wish that you would return it to me, if plans bear a price. *Mr. Hart*, I suspect, is a little mad, but perhaps he may not make the worse politician for that. You may form the same judgment of me when I tell you that I am convinced the safety of the state depends upon two measures, one of which you deem impracticable, and the other, if practicable, useless. The first is a strong levy of Irish Catholics, under French or Austrian officers. I believe it will not succeed if left to the operation of a cold letter to Lord B.; but the case would be very different if some person of confidence were sent over to him, instructed to say more than will ever be expressed in any letter, public or private, of which a regular copy is to be taken. You know

what I think of Col. Smith, but I would detach him upon that service, instead of letting him ride a great horse at Whitehall. The second measure is *Ld. Amherst*, and I am persuaded, if properly tried, cannot fail; some courting and some commanding may be necessary, and either of them alone will fail. If neither of these points take place, I would not give the price of Mr. Hart's plan for your places or my own prospects. I am prepared to creep back to my shell at Lincoln's Inn, and I shall not find it less easy to get in than I did to come out of it."

But he was shortly to be rescued from the danger of making such an experiment. His last great speech in the House of Commons, as counsel for the Ministry, was in the debate on the Earl of Upper Ossory's motion respecting the alarming state of Ireland. That country, left by the Government wholly without military defence in the new European war which had suddenly sprung up, was raising volunteer corps without the sanction of the Crown; and the great mass of the population, although still speaking the language of loyalty, manifested a clear determination by force to obtain a redress of commercial grievances, and to throw off their dependence on the British Parliament. The Opposition took the opportunity to impute this additional peril to the improvidence and imbecility of Ministers,—and the object of the resolution now moved was to have a censure passed upon them, which might lead to their dismissal. Burke, Dunning, and Fox took part in the discussion with even more than their wonted animation, and Lord North (who, we now well know, at that time sincerely wished to retire) seemed to have lost that gaiety of heart which in all past misfortunes had hitherto supported him. But Wedderburn rose at a late hour, and restored some credit to the cause of the Government, by a speech which, though imperfectly reported, we can discover to have been a fine one:—

"The honourable members opposite," said he, "no doubt considering themselves absolute perfection, are impatient to be ministers. I will not say that the noble lord who sits near me and his colleagues are not chargeable with faults. Where is there, indeed, a perfect minister, or a perfect man? The question is not of an abstract nature—but one of comparison. We ought not first to establish in our minds the idea of a perfect minister, and then judge his Majesty's present servants by that standard. It is objected to them that they depend for their existence on the favour of the Crown and their adherents in this House. Truly, then, they hold their offices constitutionally. If they could defy the Crown and the Parliament by a great cabal in the country, or by a combination of great families, I would unhesitatingly vote for their re-



moval. I never wish to see a Ministry that will not respect the Throne, and that is not willing and is not obliged to call to its aid all the virtue and all the abilities of the nation. Should a contest take place, such as is anticipated by the honourable gentleman (Mr. Fox), great as his influence is, I hope the Sovereign will prove more powerful. I disapprove of all parties, whether aristocratic or merely popular, which proceed on an exclusive principle. The honourable gentleman has said that the friends he acts with are the friends of their country—that they are united—and that they are determined never to act with the present Ministers or their friends. This is a frank, and may be a useful, avowal. Whether in or out of office, I for one will most certainly set my face against such a monopoly of power.”<sup>b</sup>

After trying to show that the present distracted state of Ireland arose from causes over which England had no control, he concluded by saying, that as no neglect had been proved against Ministers, and if there had, this was not the time to pass a vote of censure upon them, he should give his hearty negative to the motion.<sup>i</sup>—On a division there appeared 100 ayes to only 192 noes—an increasing minority, which raised great alarm among placemen, and made Wedderburn inquire with much solicitude respecting the health and looks, the probable death or resignation, of the Chief Justices.

In those days we have seen an Attorney-General would not condescend to accept the office of Chief Baron, which was indifferently paid, and not held in high estimation. Lord Mansfield had now been Chief Justice of the King’s Bench above twenty years, and, although he was still in the full possession of his faculties, hints were thrown out, but in vain, that it was time for him to enjoy that ease to which he was so well entitled. There appeared a better chance of obtaining for Wedderburn the inferior dignity of Chief Justice of the Common Pleas. De Grey, who then held it, was old and feeble, and often unfit for his work; but there being as yet no fixed retiring allowance for the judges, he was unwilling to give up its large emoluments—particularly as there was an old prothonotary nearly as infirm as himself, whose place he hoped to sell before dying or resigning. The Great Seal was Wedderburn’s ultimate object of ambition; but he had no settled plan for clutching it at this moment, as Thurlow was cordially united with Lord North. The Attorney-General could even hear without much excitement of the

<sup>b</sup> *Nescia mens hominum fati, sortisque futura.* Ere long Fox was to coalesce with Lord North, and Wedderburn was to be the

legal adviser of the Whigs, on whose supposed aristocratic feelings he was now so severe.

<sup>i</sup> 20 Parl. Hist. 1239.

Chancellor's dangerous fit of the gout; promotion to an office of such frail tenure not being very desirable under a falling minister.

While this negotiation for the retirement of De Grey  
Feb. 21, 1780. lingered, Wedderburn was much alarmed by a motion brought forward by Sir George Savile, for a list of the pensions granted by the Crown during the present reign. The abuses of the Pension List afforded an admirable subject for popular declamation down to the time when they were rectified, at the beginning of the reign of Queen Victoria, —and such a motion was always formidable to a weak Government.<sup>k</sup> Mr. Attorney however gallantly came forward, and contended that the fund out of which the pensions were paid was to be considered the private property of the Sovereign, and that the public had no right to interfere with its distribution, or to require the names of those who, by the royal bounty, partook of it:—

“The Crown,” he observed, “having a right to deal out its bounty and charity without account, no reason but curiosity can be assigned for producing the names of pensioners. No constitutional ground can be pretended for the disclosure, as no one holding a pension so granted can sit in this House.” [A voice, “There are wives of members of parliament in the list!”] “If it be so, is this age become on a sudden so virtuous, that what is given to a wife is always given to the husband? The gentleman might as well say he wishes to see the list, because one member's aunt is in it, and another's third cousin. We are told, ‘*The Irish Pension List is printed* ;’ but what good has arisen from this publicity? The relations of many respectable families are to be found in it—the ladies of noble peers. Does the pain thus inflicted on individuals produce any benefit to the nation? Without obvious advantage,—to have the virtuous, the noble, the tender-hearted, the innocent, scornfully pointed at, is an invidious exercise of power :

‘*Invidiam placare paras, virtute relicta?*  
 Contemnere, miser——’

Would you sacrifice honourable pride at the shrine of malice, and expose all that is delicate and sensible, all that indigent and modest virtue wishes to hide, to the licentious obloquy, to the injurious misrepresentation, to the wanton criticism, to the bitter sneer, of the envious and the disappointed? Finally, it is asserted that there are some unworthy persons in the list. That they may be detected, are

<sup>k</sup> I lost my election for Dudley, in the spring of 1834, chiefly through the unpopularity cast upon Lord Grey's Government by

Daniel Whittle Harvey's motion respecting the Pension List.

you to place in the pillory all the innocent and meritorious objects of royal munificence? Such reformation, or such punishment, will make every feeling mind cry out, with Job, 'If you be wicked, woe unto you: and if you be righteous, yet shall ye not lift up your head!'"<sup>m</sup>

The Ministry was saved by a majority of two only," and Wedderburn looked more wistfully than ever to the "cushion of the Common Pleas." The application to De Grey was renewed, and higher terms were offered to him to induce him to retire. While he was deliberating and doubting, news of this intrigue reached Sir Fletcher Norton, the Speaker, and threw him into an agony of rage, for he had long watched the declining strength of the tottering Chief Justice, and had reckoned with absolute certainty on succeeding him. He took an opportunity of venting his spleen when the House was in a committee on Mr. Burke's bill for economical reform. He said that on the death of Sir John Cust he had been induced to accept the chair, at the instance of the Duke of Grafton, then Prime Minister, by a promise that he was by no means to be taken out of the line of his profession, and that the way was to be kept open for his return to Westminster Hall, whenever an opportunity offered. He added, "When my character, my standing, and my general pretensions are considered, I believe it will not be deemed arrogance or vanity in me to say, that I was then at the head of my profession as a common lawyer. But I hear from undoubted authority, that it is in agitation to remove a certain Chief Justice, giving him a pension, and to appoint the Attorney-General in his room. I do not doubt that honourable and learned gentleman's abilities, but my assertion will be borne out, when I affirm that he does not stand fairly between me and my claims to professional advancement. I take the earliest opportunity of requiring a full explanation on the subject from the noble lord at the head of the Government. I declare, upon my honour as a gentleman, that I never meant to solicit your attention to the subject while it was quite personal to myself; but I feel that the fountains of justice should be kept pure and unpolluted, and there is now a danger that they may be corrupted. I am ready to prove that money has been offered in order to bring about this arrangement." Lord North denied that he was bound to the

<sup>m</sup> 21 Parl. Hist. 96. To the reproach of my country I am obliged to add that the only other member who held such language was Harry Dundas,—which induced Colonel Barré

to observe that "no Englishman could be got to defend the Pension List—so disgraceful was it."

" 188 to 186.

promises of his predecessor, and disclaimed all knowledge of any such negotiation as had been referred to.

*Mr. Attorney-General.*—"I can no longer remain silent. The committee must not be left under the false impression that I am a party to any bartering for a judicial office. Whatever might have happened, I never would have accused the noble lord of a breach of promise to me; for I never will negotiate for emolument out of the line of my profession, nor for preferment in it, with the noble lord or any other minister. I have now served his Majesty ten years in the offices of Solicitor and Attorney-General, and I have endeavoured to do my duty in them with all the zeal and ability which I possess. I hope I shall not be reckoned guilty of presumption if I hint that, during that time, I have received frequent intimations of the intended bounty of my royal master, but that, duly appreciating the favourable opinion of my services entertained in that exalted quarter, my uniform rule has been to pursue the line of my profession, patiently waiting for its honours, if they should ever be spontaneously offered to me. The right honourable gentleman ought to know that I never treated—that I never negotiated—that I never asked for office. As hitherto, I will not go to it—it shall come to me. I will not lower the profession to which I belong, I will not disgrace my own character, by seeking sinecure emoluments as a compensation for my loss of practice,\* and then place myself in the way of those who may have a just title to promotion. I know the great respect due to the character and station of the right honourable gentleman. No doubt, when he honours a committee with his opinion, he reduces himself to the level of an ordinary member; but I have been so much accustomed to see him in that chair, the dignity of which he so well supports, that I cannot separate him from his office. I therefore bow with submission to his accents, and I seek, with lowly reverence, to combat the weight of his authority. I am fully sensible of the justice of his remark, with respect to my unfitness for the bench, compared with his own great requisites. In proportion as I think highly of his professional abilities, I think humbly of my own. I am as ready to allow his superiority as he is eager to assert it. But when the right honourable gentleman quitted Westminster Hall to slide into the enjoyment of a great sinecure, and to be exalted to the high situation he now holds, he left behind him men who continued to labour with industry and assiduity, in hopes that the line of preferment would be open to them. It is rather hard upon them that the right honourable gentleman should secure a claim to return to the profession—not for the purpose of joining in the toil of it, but merely to enjoy those posts of dignity which others in the routine of business had laboured to merit, and in their turn to enjoy. For my own part, I look upon the office of judge to be in its nature so delicate, that it is unfit for solicitation; while, at the same time, I own I have not such an opinion of my own insufficiency as to induce me to reject the appointment if it were voluntarily offered to me

\* Sir Fletcher was Chief Justice in Eyre.

by those who have the just right to dispose of it. Whatever honours his Majesty may choose to bestow upon so humble an individual, I will receive them with respect and gratitude—but I never will enter into a negotiation with any minister, or exact a promise from him.” Then turning to Lord North, he thus concluded: “If the noble lord had spontaneously made any promise to me, I can assure him that I never would remind him of it, or accuse him of the breach of it. I never shall be so forgetful of my own character, as to make private differences matter of public complaint. I shall never so far degrade myself, and become lost to all sense of the decorum due to the House, as to call upon them to interfere in a personal controversy. I shall never so far forget my duty to my country, as to make a private difference with a minister the ground of my opposing a beneficial public measure.”<sup>p</sup>

The vote was taken on the clause for abolishing the Board of Trade, when it was carried by a majority of 207 to 199.<sup>a</sup>

The Government was thought to be in imminent peril, and the negotiation with De Grey was renewed with fresh energy, he rising in his terms in proportion to the importunity of those who were bargaining with him. But all these speculations were suddenly interrupted by Lord George Gordon's riots. From the timidity of the magistrates the mob was triumphant, and there was great reason to apprehend that the whole metropolis would be laid in ashes.

George III. and his Attorney-General both deservedly

<sup>p</sup> The Lord Justice Clerk Hope, having had an account of this scene from the late Earl of Haddington and the late Lord Melville, who both witnessed it, writes to me:—“They both said the effect was most surprising. Wedderburn's exordium, though off-hand, seemed quite theatrical and studied. He was so perfectly cool that he either assumed the air of being, and was believed to be, most indignant and vehement,—or he went on with the most deliberate slowness,—as he thought suited the occasion. He spoke for two hours—never took his eagle eye off Norton, whom he was addressing—made every word tell—and every word was killing—he made every look and gesture last long enough to produce full effect. I recollect Lord M. said he could not understand how any one could for such a length of time go on with such sarcasm and invective, with such prolonged slowness, as if he had not words,—though all knew and felt that it was done to make the torture which he inflicted more cruel.”

this vote, Gibbon says in his *Antobiography*:—“Among the honourable connections which I had formed, I may justly be proud of the friendship of Mr. Wedderburn, at that time Attorney-General, who now illustrates the title of Lord Loughborough and the office of Chief Justice of the Common Pleas. By his strong recommendation and the favourable disposition of Lord North, I was appointed one of the Lords Commissioners of Trade and Plantations, and my private income was enlarged by a clear addition of between 700*l.* and 800*l.* a year. The fancy of a hostile narrator may paint in the strong colours of ridicule the ‘perpetual virtual adjournment and the unbroken vacation of the Board of Trade.’ But it must be allowed that our duty was not intolerably severe, and that I enjoyed many days and weeks of repose without being called away from my library to the office. I can never forget the delight with which that diffusive and ingenious orator, Mr. Burke, was heard by all sides of the House, and even by those whose existence he proscribed.”—*Miscell. Works*, vol. i. p. 156.

<sup>a</sup> 12 Parl. Hist. 234—278. In allusion to

acquired high credit for their energy in this crisis. When the King heard that the troops which had been marched in from all quarters were of no avail in restoring order, on account of a scruple that they could not be ordered to fire till an hour after the Riot Act had been read, he called a council at which he himself presided, and propounded for their consideration the legality of this opinion. There was much hesitation among the councillors—as they remembered the outcry that had been made by reason of some deaths from the interference of the military in Wilkes's riots, and the eagerness with which grand juries had found indictments for murder against those who had acted under the command of their superiors. At last the question was put to the Attorney-General, who attended as assessor, and gave a clear, unhesitating, and unqualified answer,—to the effect, that if the mob were committing a felony, as by burning down dwelling-houses, and could not be prevented from doing so by other means, the military, according to the law of England, might and ought to be immediately ordered to fire upon them, the reading of the Riot Act being wholly unnecessary and nugatory under such circumstances. We do not know his exact words on this occasion, but they were probably nearly the same which he used when he expounded the true doctrine upon the subject judicially soon after:—"It has been imagined, because the law allows an hour for the dispersion of a mob to whom the Riot Act has been read by the magistrate, the better to support the civil authority, that during this period of time the magistracy are disarmed, and the King's subjects, whose duty it is at all times to suppress riots, are to remain quiet and passive. No such meaning was within the view of the legislature; nor does the construction of the act warrant any such notion. Magistrates are left in possession of those powers which the law had given them before: if the mob collectively, or a part of it, or any individual, within and before the expiration of that hour, attempts or begins to perpetrate an outrage amounting to felony, it is the duty of all present, of whatever description they may be, to endeavour, by the most effectual means, to stop the mischief, and to apprehend the offender." The council plucking up courage and unanimously concurring, his Majesty said that "this had been decidedly his own opinion, though he would not previously venture to express it—but that now, as supreme ma-

gistrate, he would see it carried into effect.”\* The requisite orders were issued to the troops, the conflagrations were stopped, and tranquillity was speedily restored.

With becoming promptitude the rioters were to be tried under a special commission, and Lord Chief Justice De Grey had notice, that he would be required to preside. But he was so alarmed at the thought of such a task that he instantly sent in his resignation, although the old prothonotary, whose place he so much longed to dispose of, still “languishing did live.” Wedderburn immediately claimed the Chief Justiceship as by law “the pillow of the Attorney-General.”† Lord North in vain tried to induce him to remain in the House of Commons, where his services were so essential to the Government, pointing out to him his chance of the Great Seal if any thing should happen to Thurlow, and the certainty of his becoming at no distant time Chief Justice of England in the room of Lord Mansfield; but the wary Scot would not exchange an excellent certainty for contingent splendour, and very adroitly suggested that he might still have an opportunity of supporting the Administration in Parliament, for although it had not been very usual to make the Chief Justice of the Common Pleas a peer, there was at least one precedent for it in the case of Lord Trevor.

On the 14th day of June, 1780, a new writ was moved in the House of Commons for the election of a burgess to serve for Bishops Castle in the room of Alexander Wedderburn, Esq., appointed Chief Justice of the Court of Common Pleas, and summoned to the Upper House by the title of Lord Loughborough, Baron Loughborough of Loughborough, in the county of Leicester.‡

\* According to some accounts, he said there was at all events one magistrate in the kingdom who would do his duty.

† When I was Attorney-General, my most amiable as well as witty friend the late Lord Chief Justice Tindal used, with inimitable good humour, to tell the following story:—“I had a stumbling horse that had come down with me several times to the great peril of my life, and many of my friends strongly advised me to get rid of him; but he was very quiet and a great favourite, so that I continued to ride him,—till one day I met Campbell as I was dismounting at Westminster, who said, ‘That is a nice horse you have got, Chief Justice.’ I answered, ‘Yea, but he has

come down with me several times, and I am advised to part with him.’ ‘Don’t, my dear Chief Justice,’ cried Mr. Attorney; ‘I’ll warrant you he is very sure-footed for all that.’ I walked home, and sold the animal next morning.”—The allegations of fact on which a good story rests may not be traversed.

‡ At the general election in 1774 Wedderburn had been returned for Castle Rising (London Gazette, 5 Nov.), and also for Oakhampton (Ib. 19 Nov.). On the 23rd Nov. 1774, Alexander Wedderburn, Esq., having elected to serve for the borough of Oakhampton, a new writ was ordered for Castle Rising.—(35 Com. Journ. 62.) On the 3rd of June, 1778, on his becoming Attorney-General, a

## CHAPTER CLXVIII.

CONTINUATION OF THE LIFE OF LORD LOUGHBOROUGH TILL HE WAS APPOINTED FIRST COMMISSIONER OF THE GREAT SEAL UNDER THE COALITION MINISTRY.

WEDDERBURN'S promotion, notwithstanding the decided part he had taken in politics, was generally approved of. A.D. 1780. He was known not to be as yet very deeply versed in English law, but hopes were entertained that, renouncing party connections, he would devote himself to the duties of his new office, and that he would turn out both a learned and an impartial judge. Edmund Burke, with whom he had had so many conflicts in the House of Commons, generously sent him the following letter of congratulation and advice :—

“Charlotte Street, June 15, 1780.

“MY LORD,

“Before I say any thing on business, permit me to congratulate you on your office and your honours. I hope you will auspicate both by your firmness in the course of real government, and that, instead of bringing the littleness of parliamentary politics into a court of justice, you will bring the squareness, the manliness, and the decision of a judicial place into the House of Parliament into which you are just entering. ‘Ut tu fortunam.’ If you do this, no difference of sentiment or of connection shall hinder me from rejoicing in your elevation. If I know any thing of myself, I have taken my part in political connections and political quarrels for the purpose of advancing justice and the dominion of reason, and I hope I shall never prefer the means, or any feelings growing out of the use of those means, to the great and substantial end itself.”

He then goes on to state certain resolutions which he urges that the Government should move in the House of Commons respecting Dissenters and Roman Catholics, and adds,—

“Until this step is firmly taken, the House will continue under the

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new writ was moved for Oakhampton, and he was then returned for his old borough of Bishops Castle, which happened then to be vacant by Mr. Strachey having accepted office at the same time.—(36 Com. Journ. 1006 • 5 Collins's Peerage, 440.)



impression of fear,—the most unwise, the most unjust, and the most cruel of all counsellors.”\*

Lord Loughborough began his judicial career by presiding under the Special Commission issued for the trial of the rioters at St. Margaret's Hill, in Southwark. He gained immense applause on this occasion by his charge to the Grand Jury,—most men, after recovering from their panic, being very indignant against those who had caused it, and thinking, that since the guilt of the offenders could hardly be overcharged, there need be little scruple as to the means of bringing them to punishment. But, although he could not be accused of showing any political bias, the outrages having proceeded entirely from Protestant fanaticism, reflecting men grieved that he still strove for rhetorical fame, and that he displayed the qualities rather of an eager advocate than of a grave judge. I copy some of the most admired passages of this celebrated harangue :—

“GENTLEMEN OF THE GRAND JURY,

“If you have come here totally strangers to the transactions which have lately passed in this neighbourhood, or if it were possible for any of you who were not witnesses of them not to have heard of the devastations that have been committed,—the remnants of the flames which have been lately blazing in so many parts of the metropolis, and which must have presented themselves to you in your way to this place, will have sufficiently declared the occasion for which you are called together. His Majesty's paternal care for the welfare of all his subjects would not permit him to suffer offences so daring and so enormous to remain longer unexamined than was legally necessary to convene a jury to enter upon the inquiry. . . . I think it an essential part of my duty to lay before you, in one general view, a short account of those dangers from which *this kingdom* has been lately delivered. I use this expression, because it will clearly appear, that the mischief devised was—not the destruction of the lives or fortunes of individuals, or of any description of men—no partial evil—but that the blow which it has pleased Providence to avert was aimed at the credit, the government, and the very being and constitution of this state. . . . A very short time disclosed, that one of the purposes which this multitude was collected to effectuate was, to overawe the legislature and to obtain the alteration of a law by force and numbers. . . . How the leaders of the insurrection demeaned themselves—what was the conduct of the crowd to members of both Houses of Parliament, it is not my intention to state.

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\* Burke's Correspondence, vol. ii. p. 356.

My purpose is to inform—not to prejudice or inflame. For this reason, I feel myself obliged to pass over in silence all such circumstances as cannot—and as ought not to—be treated of but in stronger language and in more indignant terms than I choose at present to employ. . . .

“Upon the 3rd of June there was a seeming quiet—a *very memorable circumstance!* for sudden tumults, when they subside, are over. To revive a tumult evinces something of a settled influence, and something so like design, that it is impossible for the most candid mind not to conceive that there lies at the bottom a preconcerted, settled plan of operation. Sunday, the next day,—a day set apart by the laws of God and man as a day of rest, and as a day not to be violated even by the labours of honest industry,—in broad sunshine, buildings and private houses in Moorfields were attacked and entered, and the furniture deliberately brought out and consumed by bonfires. *And all this was done in the view of patient magistrates!*” . . . “Fresh insults of the most daring and aggravated nature were offered to Parliament, and every one who was in London at the time must remember that it bore the appearance of a town taken by storm. Every quarter was alarmed; neither age nor sex, nor eminence of station, nor sanctity of character, nor even an humble though honest obscurity, were any protection against the malevolent fury and destructive rage of the lowest and worst of men. But it was not against individuals alone that their operations were now directed. What has ever been, in all countries, the last effort of the most desperate conspirators, was now their object: The gaols were attacked, the felons released; men whose lives had been forfeited to the justice of the law were set loose to join their impious hands in the work of destruction. The city was fired in different parts. The flames were kindled in the houses most likely to spread the conflagration to distant quarters. And in the midst of this horror and confusion, in order more effectually to prevent the extinguishing of the flames, an attempt to cut off the New River water was made; and this was followed by an attack on the Bank of England, with the view of ruining public credit.” . . . “In four days, by the incredible activity of this band of furies, parading the streets of the metropolis with burning torches, seventy-two private houses and four public gaols were destroyed—one of them the county gaol, built in such a manner as to justify the belief that it was impregnable to an armed force. Religion—the sacred name of religion—of that purest and most peaceable system of Christianity, the Protestant Church—was made the profane *pretext* for assaulting the Government, trampling upon the laws, and violating the most solemn precepts which inculcate the duty of man to God and to his neighbours. I am sure there is no man in Europe so weak, so uncandid, or so unjust to the character of the Reformation, as to believe that any religious motive could, by any perversion of human reason, induce the most fanatical to assault magistrates, to release felons, to destroy the source of public credit, and to lay in ashes the capital of the PROTESTANT FAITH. I have now related to you the rise and progress of that calamity from which, by the blessing of Providence upon his

Majesty's efforts for our preservation, this kingdom has been delivered —a situation unparalleled in the history of our country.”<sup>y</sup>

Having excited the feelings of the jury by a gross exaggeration of the facts, and an artful insinuation that, out of tenderness to the prisoners, he had kept back much that might have been truly stated against them, he proceeds to lay down the law, in a manner not quite unexceptionable; and he decidedly *misdirects*, by saying, “You are only to inquire whether the party accused is charged with such probable circumstances as to justify you in sending him to another jury;” for a grand jury ought not to find a true bill unless a case is made out before them against the accused, which, if unanswered, would justify the petty jury to pronounce a verdict of *guilty*.<sup>z</sup>

Burke, feeling that his advice had been thrown away, observes in the “Annual Register,” then under his care,—“This charge having been the topic of much conversation, we submit it to the judgment of our readers. The opinions of men respecting the legal propriety of it have been various: as a piece of oratory it has been admired; but its tendency to influence and direct the jury, and inflame their passions against men who ought all to have been supposed innocent till found guilty by their country, has been generally spoken of in terms of indignation by those who are jealous of the rights of humanity.”<sup>a</sup> “Within a short month after the riots themselves,” says Lord Brougham, “six-and-forty persons were put upon their trial for that offence, and nearly the whole of the Chief Justice’s address consisted of a solemn and stately lecture upon the enormity of the offence, and a denial of whatever could be alleged in extenuation of the offenders’ conduct. It resembled far more the speech of an advocate for the prosecution than the charge of a judge to the grand jury.”<sup>b</sup> Again, when we find a composition which all men had united to praise as a finished specimen of oratory falling to rather an ordinary level, there is some difficulty in avoiding the inference that an abatement should also be made from the great eulogies bestowed upon its author’s other speeches which have not reached us; and we can hardly be without suspicion

<sup>y</sup> 21 St. Tr. 485.

<sup>z</sup> See Lord Shaftesbury’s case, *ante*, Vol. IV. Chsp. XC.

<sup>a</sup> Ann. Reg. 1780.

<sup>b</sup> In the present time no counsel in open-

ing a prosecution would venture to make such a speech, for it is chargeable not only with inflammatory topics, but with a wilful over-statement of the facts of the case.

that much of their success may have been owing to the power of a fine delivery and a clear voice in setting off inferior matter.”<sup>c</sup>

I do not find any complaint against Lord Loughborough in the progress of these trials, when he came to sum up particular cases to the petty jury. All the prisoners tried before him on this occasion were men of an inferior condition of life, and were clearly guilty, in point of law, of the felonies for which they were indicted; but as they had been urged on by fanatical zeal and the blind fury of others, Burke compassionated their condition, and wrote to the Chief Justice the following letter, so creditable to his humanity,—in the vain hope of saving them :—

“ MY LORD,

“I have been out of town for the greater part of the last week, and am only come hither this morning. During that time I have not seen a single newspaper. On my reading the paper of this day, I find that many executions are ordered for this week, although the stock of criminals to be tried is not exhausted; and therefore a distinct view cannot be taken of the whole, nor, of course, that selection used, with regard to the number of criminals and the nature of crimes, which in all affairs of this nature is surely very necessary. If you remember, I stated to your Lordship, when I met you at Lord North’s, what had struck me on this subject, and I thought it had then his and your approbation. I afterwards mentioned the same thing to the Chancellor, and sent him a memorandum on it just before I left town. I am convinced that long strings of executions, with the newspapers commenting on them, will produce much mischief. I do earnestly beg of your Lordship, whose humanity and prudence I have no doubt of, to turn this business in your mind, and to get the executions suspended until you can think over the matter, with a proper consideration of the whole and of the several cases: for you know what a disgrace it would be to Government that the order of time of trial should settle the fate of the offenders, especially as they are low in condition, and the managers have had the wicked address not to expose themselves. I beg you to excuse my solicitude. I am really uneasy, and forebode no good from this business, unless your good judgment and good nature exert themselves from the beginning to the end. I have the honour to be always, with sincere regard and esteem,

“ My Lord,

“ Your Lordship’s most obedient and humble servant,

“ EDMUND BURKE.

“ Charlotte Street, Monday, July 17, 1780.”<sup>d</sup>

<sup>c</sup> Lord Brougham’s *Statesmen of George III.*, vol. 1. p. 77.

<sup>d</sup> Ross. MSS.

A great example was deemed necessary, and the rioters were executed by the score.

Luckily for Lord George Gordon, it was found that he had not done anything in the county of Surrey which could be construed into an overt act of high treason, and therefore his case was not within the cognizance of this Special Commission. Had he been now arraigned, the unexampled eloquence of his counsel would probably only have stimulated the rivalry of the new Chief Justice, and he could hardly have escaped an ignominious death; but his trial was postponed till the public mind was in a calmer state, and it then came on before a milder Chief Justice.\*

Lord Loughborough continued in the Court of Common Pleas during a period of nearly thirteen years. As A.D. 1780—1792. a common law judge he did not stand very high in public estimation, although he displayed some important qualifications for his office, and his conduct was not liable to any serious charge. He was above all suspicion of corruption,—he was courteous, patient, and impartial,—being neither led astray by the influence of others, nor by ill temper, prejudice, favouritism, or caprice. His manner was most dignified, and from his literary stores, and his acquaintance with the world, he threw a grace over the administration of justice which it sometimes sadly wants when the presiding judge has spent the whole of his life in drawing and arguing pleas and demurrers. By the consent of all, Lord Loughborough came up to the notion of a consummate magistrate when the cause turned entirely upon facts. These he perceived with great quickness and accuracy, and in his summing up he arranged them in lucid order, and detailed them with admirable perspicuity as well as elegance,—so as almost with certainty to bring the jury to a right verdict—instead of wearying and perplexing them by reading over the whole of the evidence, and interlarding it with twaddling comments. But the discovery was soon made that he was sadly deficient in a knowledge of the common law, and no confidence was reposed in his decisions. He must have been aware of this defect himself, and if he had supplied it (as he might have done) with the energy he had displayed in getting rid of his Scotch accent, he would have rivalled Mansfield; but he did not consider professional ignorance a bar to the accomplishment of his ambitious projects. The Great Seal was his dream by night, and

\* See *post*, *Life of Erskine*.

the subject of his daily contemplations, and this was to be gained—not by a reputation for black-letter lore, but by struggling for a high station in the House of Lords, and by watching and improving party vicissitudes. He thought that by a discreet use of the scanty stock of law he had scraped together, and by availing himself freely of the assistance of his brethren, he could decently get through the duties of his present office, and that when not engaged in the actual discharge of them, he could spend his time most profitably as well as most agreeably in preparing himself for parliamentary contests, and in keeping up his political connections.

He was, however, considerably mortified by observing the very small number of suits which came before him,—while the neighbouring Court of King's Bench was overflowing,—and he was accused (probably very unjustly) of trying to induce plaintiffs to resort to him by summing up for heavier damages than they could have got elsewhere.<sup>f</sup>

He certainly was very anxious to conceal from the public the deserted state of his tribunal, and for this purpose he would spin out business that he could well have more rapidly disposed of. It is related that once, being indisposed on the first day of his sittings after term at Guildhall, and having a cause paper which with good husbandry might have lasted a week, he got Mr. Justice Buller to sit for him,—who cleared it all off in a few hours,—and, boasting of his exploit, said, in allusion to the unwieldiness and slow motion of the serjeants-at-law—the advocates in that Court—"I have been giving the *heavy blacks* a gallop this morning."

During the first eight years of Lord Loughborough's Chief-Justiceship, for want of a "*vates sacer*," his decisions (unfortunately or fortunately for him) have perished, there being a chasm in the series of Common Pleas Reports from Trinity Term, 19 Geo. 3 (1779), the last by Sir William Blackstone, till Easter Term, 28 Geo. 3 (1788), the first by Henry Blackstone, his son. Those of the five following years make one octavo volume, and among them are to be found some important and well-reasoned judgments. No constitutional question ever came before our Chief Justice, and he had chiefly to decide upon points of practice, and upon the technicalities of real property, which are unintelligible to the non-profes-

<sup>f</sup> This was chiefly alleged with regard to "sea batteries," i. e. actions by sailors against their captains in the merchants' service for

flogging them on a charge of mutiny,—and the suspicion might arise from his attempt to correct such a very questionable system.

signal reader. Perhaps the most stirring case which arose in his time was *Steel v. Houghton*, where the question was, "whether the poor of the parish have a legal right to glean in a corn-field, after the reapers, in harvest-time?" A benevolent association supported the right,—agitating for it, and defraying the expense of the litigation. They had in their favour one of the Judges of the Court, Mr. Justice Gould, who relied upon certain dicta of Hale and Blackstone, and above all, on the text in Leviticus (xix. 9, 10): "And when ye reap the harvest of your land, thou shalt not wholly reap the corners of thy field; *neither shalt thou gather the gleanings of thy harvest*: and thou shalt not glean thy vineyard, neither shalt thou gather all the grapes of thy vineyard; *thou shalt leave them for the poor and stranger*: I am the Lord your God." A Chief Justice fond of popularity would have gained a great name in the newspapers and with the vulgar, by showing how his Court, when appealed to, could protect the starving gleaner from a wicked combination of tyrannical squires and hard-hearted farmers. Lord Loughborough, however, acted a more manly part, and gave due weight to the principles of law and the dictates of reason:—

"There can be no right of this sort," said he, "to be enjoyed in common except there is no cultivation, or where that right is supported by joint labour; but here neither of these criteria will apply. The farmer is the sole cultivator of the land, and the gleaners gather each for himself, without any regard either to joint labour or public advantage. If this custom were part of the common law, it would prevail in every part of the kingdom, and be of general and uniform practice; but in some districts it is wholly unknown, and in others variously modified and enjoyed. The law of Moses, cited as a foundation for this claim, enjoins that a part of the crop shall remain unreaped by the owner of the field; and such political institutions of the Jews cannot be obligatory upon us, since even under the Christian dispensation the relief of the poor is not a legal obligation, but a religious duty. The consequence which would arise from this custom being established as a right would be injurious to the poor themselves. Their sustenance can only arise from the surplus of productive industry; whatever is a charge on industry is a very improvident diminution of the fund for that sustenance;—the profits of the farmer being lessened, he would be less able to contribute his share to the rates of the parish, and thus the poor, from the exercise of this supposed right in the autumn, would be liable to starve in the spring."

Mr. Justice Heath and Mr. Justice Wilson concurred, and

gleaning without the consent of the owner of the field was adjudged to be a trespass.<sup>g</sup>

Lord Loughborough's most elaborate common law judgment was in the case of *Lichbarrow v. Mason*, when he presided in the Court of Exchequer Chamber, on a writ of error from the Court of King's Bench. The question was one of infinite importance to commerce—"Whether the right of the unpaid seller of goods to stop them while they are on their way to a purchaser who has become insolvent, is divested by an intermediate sale to a third person through the indorsement of the bill of lading, for a valuable consideration?" He concluded by saying:—"From a review of all the cases it does not appear that there has ever been a decision against the legal right of the consignor to stop the goods *in transitu* before the case which we have here to consider. The rule which we are now to lay down will not disturb, but settle, the notions of the commercial part of this country on a point of very great importance, as it regards the security and good faith of their transactions. For these reasons we think the judgment of the Court of King's Bench ought to be reversed." But a writ of error being brought in the House of Lords, this reversal was reversed, and the right of the intermediate purchaser as against the original seller has ever since been established.<sup>h</sup>

The finest "scene" in which he ever took a part was acted shortly before his elevation to the woolsack. While sitting at Nisi Prius at Westminster, before the jury were sworn, he desired (no doubt in consequence of some information he had received out of Court) that he might see the record in a cause about to be called on. The parchment being handed up to him, he perused it; then rising, he threw it indignantly on the table, and said with much solemnity,—

"Do not swear the jury in this cause, but let it be struck out of the paper. I will not try it. The administration of justice is insulted by the proposal that I should try it. To my astonishment I find that the action is brought on a wager as to the mode of playing an illegal, disreputable, and mischievous game called HAZARD; 'whether, allowing seven to be the main and eleven to be a nick to seven, there are more ways than six of nicking seven on the dice?' Courts of justice are constituted to try rights and to redress injuries, not to solve the problems of the gamester. The gentlemen of the jury and I may have heard of HAZARD as a mode of dicing,—by which sharpers live, and young men of family and fortune are ruined; but what do any of us

<sup>g</sup> 1 Hen. Black. 51.

<sup>h</sup> 11bd. 357.



know of 'seven being the main,' or 'eleven being a nick to seven?' Do we come here to be instructed in this lore, and are the unusual crowds (drawn hither, I suppose, by the novelty of the expected entertainment) to take a lesson with us in these unholy mysteries, which they are to practise in the evening in the low gaming-houses in St. James's Street, pithily called by a name which should inspire a salutary terror of entering them? Again, I say, let the cause be struck out of the paper. Move the Court, if you please, that it may be restored, and if my brethren should think that I am wrong in the course I now take, I hope that one of them will officiate for me here, and save me from the degradation of trying 'whether there be more than six ways of nicking seven on the dice, allowing seven to be the main and eleven to be a nick to seven,'—a question, after all, admitting of no doubt, and capable of mathematical demonstration."<sup>i</sup>

A rule having been obtained next term for restoring the cause to the paper, it was argued at great length, and with much gravity, by the learned serjeants :

*Gould, J.*—"I think my Lord Chief Justice did perfectly right in refusing to try this cause. The game of hazard stands condemned by the law of England; there are many statutes that make it illegal; and nothing can be more injurious to the morals of the nation than a public discussion of this nature before an audience whose curiosity is whetted to attend the trial of such questions. The refusal to submit it to the jury was both legal and laudable." *Heath, J.*—"All games at dice, except backgammon, are prohibited by law; and I think it would be vilifying and degrading courts of justice if they were to hear, by means of a wager, a discussion of prohibited games." *Lord Loughborough.*—"This was a mere idle wager; and I have no hesitation in saying that I think a court or a jury ought not to be called upon to decide such wagers. I adhere to the opinion which I expressed at the trial."—*Rule discharged.*<sup>k</sup>

<sup>i</sup> A report was circulated that Lord Loughborough himself, at this period of his life, was much given to gaming—that he constantly frequented Brookes's and White's, where there was very deep play, and that before delivering this very tirade he had sat up the whole night at "hazard," having merely shaved and put a wet towel round his head before coming into Westminster Hall. The real truth probably was, that he did frequent these clubs, and occasionally looked on when Charles Fox and other great orators and statesmen with whom he associated were desperately adventuring,—so that he must have pretty well known the rules and the phraseology of "hazard;" but there is no reason to believe that he himself was ever

tainted with the destructive and almost incurable vice of gaming.

<sup>k</sup> *Brown v. Leeson*, 2 Hen. Black. 43. So Lord Mansfield refused to try a wager on the sex of the Chevalier D'Eon, Cowp. 729; and Lord Ellenborough refused to try a wager upon a cock-fight, 3 Camph. 140, and Abbott, C. J., on a dog-fight, 1 Ryan and Moody, 213. But an action has been held to be maintainable on a wager of "a rump and dozen, whether the defendant be older than the plaintiff?" We ought long ago to have adopted the provision of the civil law, whereby "sponsiones ludicra" could not be enforced in a court of justice. I long tried in vain to induce the legislature to agree to this, and to change the absurd custom where an issue of fact is di-

Lord Loughborough, while a common law judge, went the circuit every summer, although the Chiefs of the King's Bench and Common Pleas were excused this duty in the spring,—one judge only being sent on the Norfolk and one on the Midland circuit.

Of his first judicial tour we have the following account, in a letter from himself to a lady, which perhaps will not much add to his reputation for pleasantry :—

“ Lancaster, 28th August, 1780.

“ I am supposed by the newswriters to be trying folks in the North for their lives and liberties, and hanging and whipping in a very shocking way. Nothing like it, I assure you. From Durham to Lancaster, I have not missed an assembly ; and the *hanging* sleeves of the misses, whose grandmothers I used to admire, are the only things I have seen that give me the least idea of *hanging*. On this Western coast, where in former days the misses never appeared, and there was no fiddling nor dancing, I feel much younger than at Durham and Newcastle, and accordingly I have been twice detected in the city of Carlisle coming out of a house kept by a fine young woman, at broad daylight, after supper. It was not quite known that the Judge had a wife ; and the old lady who lodges us at Carlisle, and who is blind, very gravely lamented to me that I could not marry all the young ladies of the family.”

From a speech which he made in the House of Lords, he might have been expected to be found very severe in dealing with criminals, so as to be placed in the category of “ hanging judges.” “ I have always held it,” said he, “ to be more humane, as well for the example of others as for the enforcement of the object and intention of the Legislature, where the guilt is evident and glaring, rather to let the law take its course, than by a mistaken lenity to multiply offenders, and accumulate sacrifices at the shrine of what is falsely considered the sanguinary spirit of our criminal laws.”<sup>m</sup> Yet he is said in practice to have been very mild in the trial of prisoners,—giving them a fair chance of being acquitted,—and not hurt (as judges are apt to be) if the sentence was mitigated by the Crown, after he had reported that there was no room for the exercise of mercy.<sup>n</sup> He is advantageously

rected by a court of equity, of stating it to the jury in the form of a wager of a sum of money between the parties. But I have at last succeeded by 8 & 9 Vict. c. 109, § 18, § 19, sched. 2.

<sup>m</sup> A.D. 1789 ; 27 Parl. Hist. 1066.

<sup>n</sup> He said in the House of Lords,—“ I re-

collect a case where four prisoners had been capitally convicted before me, and I had not on a most careful revision of the trial discovered to my own mind any difference in their cases which could warrant me in reporting favourably of any one of them ; yet I am happy to think that the Royal mercy

contrasted with Mr. Justice Gould, in an anecdote told in the House of Commons, for the purpose of illustrating the evil of discretionary punishments:—

“Not a great many years ago, on the Norfolk Circuit, a larceny was committed by two men in a poultry-yard, but only one of them was apprehended; the other, having escaped to a distant part of the country, had eluded the pursuit. At the next Assizes the apprehended thief was tried and convicted; but Lord Loughborough, before whom he was tried, thinking the offence a very slight one, sentenced him only to a few months’ imprisonment. The news of this sentence having reached the accomplice in his retreat, he immediately returned and surrendered himself to take his trial at the next Assizes. The next Assizes came, but, unfortunately for the prisoner, it was a different Judge who presided; and, still more unfortunately, Mr. Justice Gould, who happened to be the Judge, though of a very mild and indulgent disposition, had observed, or thought he had observed, that men who set out with stealing fowls generally end by committing the most atrocious crimes. Building a sort of system on this observation, he had made it a rule to punish this offence with peculiar severity; and he accordingly, to the astonishment of this unhappy man, sentenced him to be transported for seven years to Botany Bay.<sup>6</sup> While the accomplice was taking his departure for this remote region, without hope of ever again seeing his native country, the term of the principal’s imprisonment had expired; and what must have been the notions which that little public who witnessed and compared these two examples formed of our system of criminal justice?”

Lord Loughborough, when presiding at the Assizes, was ready to exercise his authority with much rigour when the occasion seemed to require it. He threatened a jury, who persisted in finding a verdict contrary to his direction, with an “attaint;” he committed to prison a jurymen who had got drunk; and he laid a fine of 500*l.* upon the inhabitants of Essex for the insufficiency of the county gaol.—Still, even on the bench, although his decisions were according to law, he kept up his character as a courtier. The following anecdote,

was extended to one of them—on the consideration that one might be saved without injury to the effect of the law.”

<sup>6</sup> Buller was said always to hang for sheep-stealing, avowing as a reason that he had several sheep stolen from his own flock. Heath, acting more on principle, used to hang in all capital cases, because he knew of no good secondary punishments. Said he, “If you imprison at home, the criminal is soon thrown upon you again, hardened in guilt. If you transport, you corrupt infant societies,

and sow the seeds of atrocious crimes over the habitable globe. There is no regenerating of felons in this life, and for their own sake, as well as for the sake of society, I think it is better to hang.”—When sitting in the Crown Court at Gloucester, he asked a lying witness from what part of the county he came, and being answered, “From Bitton, my Lord,” he exclaimed, “You do seem to be of the Bitton breed, but I thought I had hanged the whole of that parish long ago.”

which I have on undoubted authority, illustrates the foolish excess of his insincerity. "At Durham the Chapter was wont to be a very opulent and hospitable body—not too much distinguished by qualities of a higher order than those which might befit a cenobium of Protestant Benedictines. It happened that at an Assize at Durham, at which Lord Loughborough presided in the Crown Court, the criminal calendar was unusually light, and the noble and learned Chief Justice, in his charge to the Grand Jury, congratulated them on a result which he could not but attribute to the county being blessed with the residence within it of such a body of men as the truly reverend Chapter of Durham!"

Before I conclude his judicial career, prior to his holding the Great Seal, I ought to mention that he had a great and unlucky ambition to shine at Quarter Sessions. In right of his wife he was possessed of an estate in Yorkshire. Here he loved to reside in the vacation, and to act the country gentleman. Being in the commission of the peace *virtute officii*, he took out his *dedimus*, imprisoned poachers, and made orders of bastardy. Not contented with the glory to be acquired at Petty Sessions, he got himself elected chairman of the Quarter Sessions, and there he tried appeals respecting poor rates and orders of removal. On these occasions, it is said, he was almost always wrong, and the Court of King's Bench had a wicked delight in upsetting his decisions. He seems, however, himself to have had a high opinion of his capacity for "justice-business." Thus he writes to Lord Auckland:—"Your letter found me in Yorkshire, employed very eagerly in a manner you would very little expect; I was attending the Quarter Sessions at Pomfret, having not only become a country squire, but an active Justice of Peace. If I could conveniently indulge my present disposition, I should never see the inside of any Court but a Quarter Session, and be very well contented to be *relégué* beyond the Trent."

But we must now behold him in a sphere much more congenial to his talents and acquirements. On the 19th day of June, 1780, he took his seat in the Upper House of Parliament. <sup>p</sup>

<sup>p</sup> "19 June, 1780.—Alexander Wedderburn, Esq., Lord Chief Justice of the Court of Common Pleas, being by letters bearing date, &c., created Lord Loughborough, of Loughborough in the county of Leicester, was (in his robes) introduced between Lord

Willoughby de Broke and the Lord Grant-ham (also in their robes), the Gentleman Usher of the Black Rod and Garter King at Arms preceding. His Lordship on his knee presented his patent to the Lord Chancellor on the Woolsack, who delivered it to the

Great surprise and disappointment were caused by the line which he at first took there. It was supposed that he had been made a peer expressly for the purpose of strenuously supporting the falling Government against the attacks of Lord Shelburne, Lord Rockingham, and Lord Camden. His assistance was much wanted; for although, upon a division, there was still a large majority of peers for subjugating America, and for lauding all the blunders of Ministers, they were awfully weak in debate, having nothing better to rely upon, after the uncertain advocacy of Thurlow, than such drowsy, commonplace speakers as Lord Stormont and Lord Hillsborough. Wedderburn in the House of Commons had shone in the very first rank of orators. For the last two years he had borne the whole brunt of the Opposition, and had proved that, with a better cause, he would have been a match for Dunning, Burke, or Fox. Become Lord Loughborough, and transferred to the House of Peers, it was thought that as a debater he would be equally active, and apparently more brilliant, like the moon among the lesser lights.

Although he attended regularly in his place, and voted with the Government, he long cautiously abstained from opening his mouth on any subject connected with party politics, and he witnessed the fall of Lord North without making an effort to save him. He plausibly pleaded the sacredness of the judicial character which he had now to support, and declared that he would never sully his ermine by engaging in parliamentary strife. Those who knew him well, suspected him to be actuated by the consideration that he had nothing more to expect from the present Ministry, Thurlow firmly holding the Great Seal,—and they foretold that he would unscrupulously mix in the fray when he had a prospect of sharing in the plunder. From the time of his being made a peer, till the formation of the Rockingham Cabinet, on Lord North's resignation in March, 1782, he is stated to have spoken only twice: first, respecting the release of a Russian officer, apprehended for having been engaged in Lord George Gordon's riots;<sup>a</sup> and again on a bill for regulating the administration of justice in the Isle of Man.<sup>b</sup>

clerk, and the same was read at the table: his writ of summons was also read. Then his Lordship took the oaths, &c., and was afterwards placed on the lower end of the

Barons' Bench."—*Lords' Journals*.

<sup>a</sup> 21 Parl. Hist. 750, 752.

<sup>b</sup> 22 Parl. Hist. 561.

Even in the debate on our rupture with Holland, and our disputes with the Northern Powers respecting the search of neutral ships, he had remained silent, although, from his acquaintance with international law, he might have been expected to have supported the belligerent rights of Britain — without subjecting himself to the imputation of being a political judge, which he now pretended so much to dread. He boasted that his great object was to keep down arrears in his Court.\*

The following letters, written by him to Mr. Eden in the beginning of 1782, give a striking view of the distracted state of affairs shortly before the resignation of Lord North:—

“Speculations are of course the consequence of last night’s division. Those I have seen think the Admiralty must change, but you know as well as I do how strongly against probability that station has continued unaltered. You will hardly believe that I am as little informed as I am interested in the subject. The only pursuit that gives me any real satisfaction is to fill the little corner of Westminster Hall allotted to me with some credit.” . . . . . “I arrived in town the night before last, and, as the newspapers will inform you, had yesterday a most gracious reception, but no particular conversation. Lord Hillsborough was very desirous of entering fully into discourse, but it was soon interrupted, and our appointment to meet again has not yet taken place. I saw Lord N. this morning, and had a very frank, but at the same time a very loose and desultory, conversation with him. The Chancellor was at court, but did not seem to have much curiosity about him, nor a much clearer countenance than when I last saw him.” It seems to me that there is a great disposition to think lightly of the difficulties of Government on your side of the water, \* and to suppose that the first wish of every Lord Lieutenant is to be easy at home. It will require many conversations to oppose prejudices so very mischievous. Both the persons I talked to seemed to start from the subject of the ‘volunteers,’ as if they were afraid to know too much of it. Lord N. told me he had a great deal to say to me, and that we must meet soon, but fixed no time, though I almost tendered myself to go down to Busby with him. I

\* This achievement seems to have been accomplished with very slight labour. He thus on one occasion explains his reason for leaving his villa at Mitcham during term time, and taking up his residence in London: —“I found I could not manage the little business of Westminster Hall in this term without sometimes looking at a book and meeting in an evening, so that I have betaken myself to town for a month.”

† 22nd February, 1782, on General Con-

way’s motion for putting an end to the American war, when Ministers had a majority of one.

“Jealousies between these legal dignitaries seem already to have sprung up, and Thurlow, looking forward to a ministerial crisis, was already afraid that Wedderburn might be intriguing to succeed him.

\* Mr. Eden was then Chief Secretary in Ireland.

shall be glad to know whether you suppose your letters undergo any examination, for if they do I shall be very much puzzled to correspond with you." . . . . . "On Wednesday last it was given out with great industry, and the rumour was very eagerly adopted, that Lord N. and Lord S. had resigned. The same thing was continued yesterday, but the credit of it sunk towards the evening, especially as Lord N. had given the lie to it by his appearance in the House of Commons. It was a story raised, I believe, to favour the division for Opposition on the motion of this evening, which is to the same effect as the last. From all the intelligence I could learn last night, the majority is likely to be better for Government than it was last week. Several country gentlemen, alarmed at the consequences of their own votes, have, I hear, been with Lord N. to assure him of their support. Last night at White's, where I supped, no man in Opposition would accept a bet offered on each number that the majority would be 10, 20, 30. Lord Coventry offered to take 15, 30, 45—declaring that the country gentlemen were the true rats, and had gone back to their old haunts. Rigby was in very high spirits, and exulting in the confession that the landed interest were the support of Lord N. The true state of things, as far as I can judge, is, that Lord N. on the unfavourable appearance of the House has desired that any arrangement might be without regard to him, —without taking any part in the attempt to make it, and at the same time with a declaration that he would do his duty to the last moment. The charge of this arrangement has been committed to the Chancellor. Lord G. and Lord W., and afterwards the Duke of G. and Lord C<sup>a</sup>., have all excused themselves, as you would naturally suppose they would,—having each of them retreated from difficulties much less than the present. What other applications have been tried I know not, though I am certain that there have been others. The only part I have had in it is, that I have told Lord N. and Lord Ch<sup>r</sup>. severally, that they begin at the wrong end, and that the first object is to strengthen the weakest post by offering Lord Howe the Admiralty, which he cannot be weak enough not to accept. This done, there would be scope and time to proceed with the rest. Neither of them contradicted my idea. But the first gave me to understand that it was not at present in his hands; the second admitted by his manner that it was, but gave me no reason to conjecture what his plan of operations might be. Supposing the division to-night more favourable to Government than it has lately been, my conjecture is that the present negotiations will prove abortive, and that Lord N. will again be obliged, reluctant and unequal as he feels himself to the arduous undertaking, to engage with the public difficulties, and that he will take no warning from what has happened, nor use any exertions to strengthen his Administration. I saw him last Sunday, and have offered him every attention in my power. He is sensible of the kindness expressed for him, indifferent in appearance to any demon-

† Notwithstanding the liberties used by Sir James Graham at the Post Office, I do not think that in our own times there would

be a suspicion of Government surreptitiously prying into letters written to or from the Irish Secretary.

strations of zeal for him as minister, and in as cheerful spirits as ever you knew him to possess. In a state to be plagued to death by the folly, ingratitude, and perverseness of the people who come to him, and to be tortured by the shameful and wretched exhibition which the country makes, I am not sure whether all this accumulated distress does not, in some degree, lighten the misery that another cast of mind would expose most men in his situation to feel." . . . . . "There are men here of great consideration, who think that if we had peace elsewhere, we should be obliged in sound policy to teach some of your gentlemen to treat us with more respect; that it is absurd to suppose Ireland can be independent, and that the option to be exercised on your side is to be dependent on France or on England. According to that idea, whatever language we may tolerate or overlook, we must do no act that can admit the high-sounding language of Irish patriots to be constitutional. Without discussing it, this is an opinion (you may depend upon it) that prevails very much in this country; and those who think most loosely on the subject are the present Administration and their friends. Wherefore it is very just that they should be popular on your side of the water, in comparison of those who will have most sway should they be removed." . . . . . "Out of respect to the curiosity you must have to hear from hence at this singular period, I write to you by this post, though nothing has happened to make a postscript to my last letter necessary. My information about the persons sent for, and consulting, was not quite accurate: his Majesty sent early in the morning for Lord Storm., who was afterwards sent to the Chancellor; and Lord N. did not go to St. James's till both the others had been there. A great statesman, and your constant correspondent, surmises that there is an attempt to make some arrangement, and that the Chancellor has had authority to negotiate. He further supposes that Lord Gower may be persuaded to lend himself for a little time in the Treasury, till matters can be settled. I don't imagine this is better founded than upon the observations which the whispering about the Woolsack always occasions. The Chancellor talks a very manly language in censure of the vote of Wednesday; but I think it not unlikely that he may follow that with a comment on the neglect which produced that vote. The answer seems well guarded, and not liable to much attack; but on Monday either that or an attack on Lord Sandwich is expected from Fox, as Lord N. has put off his taxes. I went this morning to show the goodwill which, in spite of all the reasons against it that you know, I really feel for him, and saw him for a minute, with as cheerful and as lively a countenance as if he had been at the head of his table. Hatsell says he will give fifty guineas to receive a guinea a-day while Lord N. remains in the Treasury. There were some unlucky incidents in the division, which must have arisen from the bad conduct of the debate on the part of Government. Mr. Wild, with a million of the loan in his pocket, was with much difficulty dragged to the House, but voted against Lord North. Sir Gilbert Elliot's speech did much mischief, for Sir William Dolben had declared himself satisfied with the Minister's declaration, and that he should therefore vote differ-



ently from the vote he had given on Friday ; for which he was, as you may imagine, exposed to much attack, and pelted, as an example to deter others ; after which Sir Gilbert got up, professing himself *unsatisfied*, though a hearty friend in general to Administration. The effect of the comparison between the two was to fix all the wavering well-wishers in the same line with Sir Gilbert. I have no patience with him, for he cannot be the dupe of his own reasoning so much as to convince himself that a vote of the House of Commons is an ingredient for making peace. I hope all the mischief we are making here will come too late to breed any disturbance to you in Ireland.”<sup>2</sup>

While these struggles were proceeding, Lord Loughborough looked on as a curious spectator, considering that peradventure they might bring him some good ; and although he always voted with Lord North, and professed strong attachment to him, he seems not without secret satisfaction to have witnessed his fall.

Meanwhile he was solaced by an auspicious event in domestic life. Having been some time a widower,<sup>a</sup> he announced to his friend Sir Ralph Payne (afterwards Lord Lavington) his resolution again to enter the holy state of matrimony, and received from him the following congratulation :—

“ Broadlands, Sept. 16, 1782.

“ I trust, my dear Lord, that you are too well satisfied of the credit which I give you, in my heart, for every testimony of friendship which you have ever shown to me, to doubt the sense which I entertain of this last instance of it ; and that it is as unnecessary to assure you of my gratitude as it is to make any protestations of the sincere pleasure and satisfaction which Lady Payne and I feel at the very kind information which you have communicated to us. You have such sufficient securities, my dear Lord, for your own future happiness, that it would not be more impertinent in me to offer to compose speeches for you in the House of Peers, than to persecute you with my prayers for your enjoyment of all the blessings that the world can afford. But there is one prayer which I cannot forbear to offer, which is, that you would realise the happiness of which you have as yet only held out a prospect to Lady Payne and myself, and give us the earliest opportunity that you can of paying our devoirs, where you may imagine us not little desirous of a better acquaintance than can be formed even from your own report. Until you can procure us this pleasure, we shall be forming a thousand conjectures and imaginations, which, with all the pleasure and partiality

<sup>2</sup> These letters are not dated, but evidently refer to the debates and divisions in the House of Commons, from 27 Feb. to 19 March, 1782. See 22 Parl. Hist. 1087—1214 ; Adolphus,

vol. iii. 325—343.

<sup>a</sup> The first Lady Loughborough died 15th Feb. 1781.

that will attend them, will be teasing, while attended with the impatience that we feel upon the occasion. Not having the Peerage at my fingers' ends, nor Lord Palmerston having it in his library, I am at present at some loss to identify the lady to whom you allude in your letter. I only hope that she is not a sister of Lord Courtenay, who gave the ton last year to the festivities of Fonthill, where, I understand, she was so much the general subject of panegyric amongst her own sex, that it would be a great pity that she should be now pulled to pieces by any Lady Betty or Lady Ann, as she probably might, for making a monopoly of your Lordship, and where she was so much admired by the men, that poison must probably be the lot of any one who should presume to think of appropriating her. Don't think that this anecdote is the result of any indiscreet investigation consequent to your letter. I assure you that I heard it in Dorsetshire before I knew that you had any interest in any lady of that name. . . . .

"With respect to Brighthelmstone, I should ill deserve that opinion which I am very solicitous to obtain, were I to utter the least complaint, or entertain the least dissatisfaction at your breach of an engagement which is now so much more honoured in the breach than the observance. I only hope that Lady Loughborough will hereafter recollect that a wife ought, in equity, to be as responsible for such debts of her husband as she is capable of discharging, as a husband is in law bound for those of his wife; and that her ladyship and you will, at proper seasons, think it just to liquidate with interest a demand, for the satisfaction of which we are contented to wait some time longer.

"Your affectionately attached

"RALPH PAYNE." <sup>b</sup>

The marriage between Lord Loughborough and Miss Courtenay took place soon after, and proved a very comfortable one, although the bridegroom had not much tenderness in his nature, and placed his happiness chiefly on the stirring events of public life.

On the formation of Lord Rockingham's Administration Lord Loughborough was astonished to see Thurlow still in possession of the Great Seal. From this time there was much coldness, and before long there was open hostility, between these former friends and colleagues. The Chief Justice saw with jealousy and envy the Chancellor's unbounded favour with the King, and perceived that there was no hope for himself, unless the royal will could be thwarted. He therefore lay by for an opportunity of engaging in some plot for storming the Cabinet.

During Lord Rockingham's short administration he assisted

<sup>b</sup> Rosslyn MSS.

the Chancellor in defeating the two Government measures of the Contractors' Bill,<sup>c</sup> and Burke's Economical Reform Bill;<sup>d</sup> and, from factious motives, he opposed the bill for declaring Irish independence,—arguing, with considerable force, the impossibility of the two countries continuing long together on the new footing.

Now he had his first open conflict with Thurlow—moving, by way of slur upon the Government for omitting to do so, an address of congratulation to the Crown on Lord Rodney's victory. The Chancellor at first violently opposed it, but was obliged under some modification to concur in it.<sup>e</sup> Lord Loughborough's position meanwhile was very irksome; for if he supported the Government, he aided men with whom there seemed no chance of his holding office; and if he helped to turn them out, this would only humour the King, and make Thurlow more powerful. Suddenly the face of affairs was changed by Lord Rockingham's death and the premiership of Lord Shelburne. On this occasion he received the following letter from Burke, showing an intimacy between them which by and by facilitated the "Coalition:"—

"MY DEAR LORD,

"I received your very kind and obliging letter from Beechwood, and I thank you for it very sincerely. It was much the more acceptable on account of the place it came from, combined with the remembrance of the worthy master. I met him since in not so pleasant a place, under St. James's Gate, and had a hearty shake of the hand with him. It was very good of you both, in such a situation, formed for every kind of calm satisfaction, to throw a thought upon a scene so full of confusion as this, and on my poor part in it, which, contrary to all order, is as troublesome as it is inconsiderable. I remember several years ago a few most pleasant days that I passed with you and Sir John under his noble beech trees, in a manner and with thoughts perfectly remote from my course of life and the train of my ideas. Since then many winters have snowed upon my head without making it in proportion wiser, and God knows whether I have done good to others in any proportion to the innumerable unspeakable vexations which I have suffered during that whole time. I cannot say that these troubles were not mixed with many consolations. But it requires at least my whole stock of philosophy to bear up against the events which have lately happened, and which have indeed gone very near to my heart. I have lost, and the public has lost, a friend. But this was the hand of God manifestly, and according to the course and order of his providence. I had no hand in it. But to think that all the labours of his life and that all the labours of my life should in

*the very moment of their success* produce nothing better than the delivery of the power of this kingdom into the hands of the Earl of Shelburne—the very thing, I am free to say to you and to every body, the toils of a life ten times longer and ten times more important than mine would have been well employed to prevent,—this, I confess, is a sore, a very sore trial. It really looks as if it were a call upon me at least wholly to withdraw from all struggles in the political line. This was the first impression on my mind. I do not know how long it will continue. We are naturally changeable. There is a great deal of difficulty at my time of life and in my circumstances in changing, even to a course that would seem more suitable to decline and disappointment. On the other hand, if we go on, there must be some sort of system. If so, all is to begin again. A great part of our construction is (what I call) sound. But there is a great, and I fear irreparable, breach. With what to build it up, that will bind and coalesce, I do not see.

“Indeed I do not see any thing in a pleasant point of view. I bear up, however, better than my present style would seem to indicate. I do so rather by force of natural spirits than by the aid of reason, though now and then reason whispers some sort of comfort even by suggesting one’s own blindness, and that there is good ground to think, whatever appearances may be, that in some way or other, at some time or other, or in some place or other, the effect of right endeavours must be right. ‘Nota est illis operis sui series; omniumque morum per manus suas venturarum scientiæ in aperto est semper; Nobis ex abdito subit.’

“Your Lordship sees that, like Hudibras, discomfited and laid in the stocks, I

‘Comfort myself with ends of verse  
And sayings of philosophers.’

“I wish you most heartily a pleasant circuit, moderate litigation, and as little hanging as possible. Alas! it is not worth while to swing out of the world those you have to send away. When shall we have a *grand Jail Delivery*?

“I am, with great esteem and regard,

“My dear Lord,

“Your most obedient humble servant,

“EDMUND BURKE.

“Whitehall, July 17, 1782.

“Here still—but out in law.

“I forgot to tell you that I had a most friendly note from Adam Smith at his departure for Scotland.”<sup>f</sup>

Thurlow’s hold of the Great Seal seemed at first firmer than ever, for, instead of leading the Opposition, he acted cordially with the Chief Minister; but before long

A.D. 1783.

<sup>f</sup> Rosslyn MSS.

a ray of hope dawned upon Loughborough. Fox was so exasperated against Lord Shelburne for overreaching him, that he vowed he would never serve with him again, and declared that he considered Lord North a less obnoxious character; while Lord North was dissatisfied by observing that the King really seemed to have gone over to the Shelburne Ministry, and was estranging himself from those who had stood by him during the whole American contest. If there could be a coalition between the Rockingham Whigs, now called "Foxites," and the party of Lord North, they would greatly outnumber the adherents of Lord Shelburne, the King must surrender, and the Great Seal must be wrested from Thurlow. In a letter written by Lord Loughborough while on the summer circuit of 1783, he shows his growing impatience of Lord Shelburne:—

"The people I have seen, and the places I have passed through, are all hostile to the Administration in their general course of politics. One would not, therefore, form any judgment of the disposition of the country from the appearances in this quarter; but I hear from all quarters that there is a most general opinion of the incapacity of the Minister. The shop-tax is universally odious; and following so soon the window-tax, which is much more felt in country towns than in London, both sums are added together when men compute the additional burden, and the amount is very difficult to bear. If there is likely to be any thing of a stirring character in Parliament, I shall hasten my return, though I am sure my absence was of very little consequence in the late debates, where the superiority of our friends appears very conspicuous in Mr. Woodfall,—imperfect as his reports now are."<sup>8</sup>

However, Parliament was prorogued without any opportunity of striking a blow; and Lord Loughborough, after the circuit, retired to Buxton, labouring under disease, and much depressed in spirits. Thence he wrote to a friend:—

"This place has hitherto been of no service to me, and I am heartily tired of the unsuccessful experiments that the physician has made to prevent the waters from disagreeing with my stomach. I am fully persuaded I should enjoy more health and happiness from a moderated retirement than I can ever find in the increase of public business. This idea has been gaining upon my mind for some time; and I am so far from feeling the least anxiety to remove any obstacle that prevents my being irretrievably fixed in a political situation, that, were the way to it perfectly open, I should be very unhappy to enter upon it."

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<sup>8</sup> 19 Parl. Hist. 1360.

Getting out of this short fit of depression, he was more eager than ever for the promotion he had been deprecating, and, Parliament again meeting, a certain prospect was held out of his ambition being speedily gratified by the famous "Coalition."

There was no regular negotiation between the Tories and the Foxite Whigs, and no formal treaty was signed. Both hating the Minister, they were gradually and insensibly united. The energy of Fox was chiefly effective in consolidating the Coalition; but there is no doubt that the subtlety of Loughborough powerfully contributed, by removing the scruples of Lord North, over whose mind he exercised considerable influence. The grand united attack was to be made on the articles of peace with France and America.

The Lord Chief Justice of the Court of Common Pleas now buckled on his armour, which had almost become rusty, and, throwing aside all his pretended scruples about the sacredness of the judicial character, mixed in the thickest of the fray.

The debate on the "Preliminaries" coming on in the House of Lords, there was a struggle between Lord Loughborough and the Prime Minister which should have the advantage of following the other; but the latter was forced up, and the former is said to have exclaimed,—“The Lord has delivered you into my hand.” He immediately followed, and his speech was very masterly. It is reported at considerable length, but the reader will be contented with a few detached extracts from it. Thus he began:—“I could not in fairness rise to offer any opinion in this debate till I had the explanation and the defence of the First Minister of the Crown, for he has the fullest information of all the circumstances under which this treaty has been concluded, and he possibly might have removed my objections to it. But having attentively listened to him, I am sorry to say that my objections are strengthened. I now clearly see that, by the fault of the Government in carrying on these negotiations, the country is disgraced, and, I fear, is undone. I require only one point to be admitted—that the condition of the kingdom was not so desperate as to oblige us to accept any terms of capitulation which our enemies chose to offer. Neither the Prime Minister nor his colleagues have defended their conduct by denying this position; and they have talked of the preliminaries, not as a capitulation, but as a treaty. When

two powers at war have opened to each other their desire of making peace, it is obvious that some point must be fixed as the basis of the negotiation—either the actual state of possession, or the state of possession before the commencement of hostilities, or the state of possession at some intermediate period. But each of these has been considered too favourable to be accorded to us, and the only basis of this treaty has been, to correct what was distasteful to France in any former treaties which we have concluded with her.” He first attacked the stipulation allowing the repair of the fortifications of Dunkirk, which by the treaty of Utrecht, by the treaty of Aix la Chapelle, and by the treaty of Paris, were to be demolished—thus putting our enemies in the undisturbed possession of a great port in the very mouth of the Thames—which in time of war must be fatal to our commerce, and must expose us to the peril of invasion.<sup>b</sup> He proceeded to the removal of the restriction to fortify St. Pierre and Miquelon in the West Indies, and Pondicherry in the East, with the extension of the right of fishery on the coast of Newfoundland. He then goes to Africa, and contends that British interests had been wantonly sacrificed in every quarter of the globe. He was particularly severe upon the article by which, upon evacuating New York, Long Island, and the positions we retained in America, we should deliver up all houses, goods, and persons found there. “If,” said he, “this were the capitulation of a besieged town, it would be scandalous to surrender on such terms. At the lowest ebb of distress, reduced and almost undone, the necessity can hardly be conceived, that should oblige a state to subscribe to an article evidently inserted for no other purpose than to blast for ever the hitherto untainted honour of the nation. Francis I., vanquished and captive, wrote to his subjects, ‘All is lost except honour,’ and the spirit of that sentiment preserved his kingdom and restored his fortune. If we had implored, in this instance, the aid of France and Spain, though our enemies,—the generosity of these two great countries would have interposed in favour of our fellow-subjects whom we have deserted. In every treaty that has terminated a civil war, the articles of mutual forgiveness and restoration have ever been the easiest to settle.” After giving the instance of the Catalonians by the treaty of Utrecht, and the Irish

<sup>b</sup> It is amusing to observe what a bugbear Dunkirk was to us for a century, and how harmless it has been.

Roman Catholics by the treaty of Limerick, he continues: "In ancient or in modern history, there cannot be found a parallel to this shameful desertion of men who had sacrificed all to their duty, and who perish by their reliance on our good faith. There is even a horrible refinement in the cruelty of the article; they are told that one year is allowed them to solicit from the lenity of their persecutors that mercy which their friends refused to secure to them—to beg their bread from those by whom they have been stripped of their all, and to kiss the hands that have been reddened by the blood of their parents." He concluded by denying the power of the Crown to cede British territory in our possession without the authority of parliament.<sup>i</sup> Upon a division, Ministers had a majority of 13 in the House of Lords, but there was a majority against them of 17 in the House of Commons,—for censuring the articles of peace; and Lord Shelburne was driven to resign.<sup>k</sup>

Loughborough expected to be Lord Chancellor in three days. But, amid the difficulties opposed by a hostile Court to the formation of a new government, there was an interregnum of five weeks—at the end of which the Coalition leaders found it necessary to agree to put the Great Seal into commission, the King being so decidedly adverse to have any keeper of his conscience except the pious Thurlow,—and our baulked aspirant was obliged to be satisfied, for the present, with a slight foretaste of his future greatness, by being made First Lord Commissioner.<sup>m</sup> His brother Commissioners were Sir William Henry Ashurst, a justice of the Common Pleas, and Sir Beau-

<sup>i</sup> This question I have previously discussed in the *Life of Lord Thurlow*, Vol. VII. p. 219.

<sup>k</sup> 23 Parl. Hist. 421, 435, 571.

<sup>m</sup> The following is the Duke of Portland's announcement to Lord Loughborough of his appointment:—

"My Lord,—You will receive from the Secretary of State an official notice of his Majesty having been graciously pleased to appoint you First Commissioner for the Great Seal, and of his having signified his pleasure that you attend him to-morrow at the levée at St. James's for the purpose of receiving it. But I cannot refuse myself the satisfaction of communicating to you this event, in which I flatter myself that the part I have taken is a demonstration of my respect and esteem for your Lordship, and a very convincing

proof of the sense I entertain of my duty to the public.

"I have the honour to be, with great regard,

"My Lord,

"Your Lordship's most obedient  
humble servant,

"PORTLAND.

"I had the King's commands to offer the Speakership to Lord Mansfield; he was at dinner when I called, and therefore I cannot inform your Lordship of his intention in that respect."—*Ross's MSS.*

Although Lord Mansfield was Speaker of the House of Lords while the "Coalition" lasted, Lord Loughborough had all the juridical patronage usually belonging to the office of Chancellor.



mont Hotham, a baron of the Exchequer. The Great Seal was delivered to them on the 7th of April, 1783, and two days after they were sworn in, and took their seats in the Court of Chancery.<sup>n</sup>

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## CHAPTER CLXIX.

CONTINUATION OF THE LIFE OF LORD LOUGHBOROUGH TILL THE KING'S ILLNESS IN 1788.

LORD LOUGHBOROUGH continued First Lord Commissioner of the Great Seal rather more than eight months,—during A.D. 1783. which time he forsook the Court of Common Pleas, and devoted himself to the Court of Chancery, but no cases of much interest came before him,<sup>o</sup> and I shall postpone my view of him as an Equity Judge till he sat there singly as Lord Chancellor. One good act which he did as Lord Commissioner should be commemorated—he gave a silk gown to Erskine; and it should be stated to his credit, that during his whole career he was always disposed to show respect for men of genius, however widely their political principles might differ from his own.

Notwithstanding his disappointment, he put forth all his strength to support the “Coalition” in the House of Lords. He did not preside there, the woolsack being occupied by Lord Mansfield, as Speaker; but, although he was not formally a member of the Cabinet, he was considered the organ of the Government. Here the storm was at last conjured up which proved fatal to the “Coalition;” but comparative tranquillity for some time prevailed, the “Opposition,” headed by his Majesty, confining their efforts to the Lower House.

Meanwhile Thurlow showed his factious hostility by opposing the bill for establishing the judicial independence of Ireland, which had been introduced by the late Government when he himself held the Great Seal. He particularly com-

<sup>n</sup> Cr. Off. Min. Book, No. 2, fol. 29, 30.

<sup>o</sup> See the decisions of the Lords Commissioners Loughborough, Ashurst, and Hotham, 1 Brown's Chancery Cases, 267—337. They affirmed several decrees of Lord Thurlow reheard before them, and disposed satisfac-

torily of a good many questions on the law of legacies, and respecting dower and curtesy. All the three generally deliver their opinions; but Loughborough must have ruled the Court, for the other two were very incompetent.

plained that no sufficient explanation had been given of the principle of the bill, or of the measures which were to accompany it. Lord Loughborough answered, "that the Ministers, who were the authors of the bill, could not with much decency require to be informed of its grounds and tendencies, and insist on knowing the policy of which it forms a part." Thurlow still growled, but lay by for a better opportunity to avail himself of the dislike of the present Administration, which he knew lurked in the hearts of a large majority of the House.<sup>p</sup>

Next came a motion which Thurlow had ingeniously concocted, although decency prevented him from appearing openly to support it. A personal attack was made upon Lord Loughborough for being a Commissioner of the Great Seal while he held the office of Chief Justice of the Common Pleas. It was put into the hands of the Duke of Richmond, who, affectedly disclaiming the intention of giving pain to any individual, pointed out very invidiously the evil consequences of the present arrangement. He dwelt much upon the importance of preserving the independence of the Judges, and contended, that they must be under the influence of the Crown, if, in addition to the judicial offices which they permanently held, they might be raised to another of great power and profit, to be held during pleasure—there being no more effectual mode of working upon their hopes and fears. He likewise complained of the obstruction to public business which must necessarily arise from such unseemly pluralities, and contended, that the practice might (though no doubt without reason) give rise to particular suspicion in the present instance, as the salary of Chief Justice of the Common Pleas, while the office was held by Lord Loughborough, had been increased 1000*l.* a year by his Majesty.<sup>q</sup> He said he had intended to move, that a committee be appointed "to inquire into the independency of the Judges, and into the best means of securing it;" but he was aware that a naked vote of that kind might be deemed unparliamentary and objectionable, and he should only move a resolution, "That putting the Seals in commission *durante bene placito*, and appointing judges Commissioners, with large salaries and perquisites to be received by them during the existence of a commission, originating in and solely depend-

<sup>p</sup> 23 Parl. Hist. 747.

<sup>q</sup> At this time the Judges' salaries were payable out of the Civil List, and might be

increased without an application to the Legislature.

ent on the will and pleasure of the Crown, tends to invalidate the Act 13 William 3, for securing the independency of the Judges." He was backed up by several court-seeking peers in the guise of patriots—one of them denouncing the commission as "a job, for time-serving purposes and factious ends, subversive of the system which his Majesty, at the commencement of his reign, in the true spirit of a patriot king, had been so graciously anxious to establish, and only calculated to bolster up that infamous and ruinous coalition of parties by which this country had lately been murdered, cursed, and damned."

*Lord Loughborough.*—"I never offered myself to the attention of the House under circumstances that required so large a share of your Lordships' favour and indulgence. I am indeed in a situation of great difficulty. Although personality has been studiously disclaimed, I am sure all your Lordships feel that the question is purely and entirely personal, and that your Lordships would certainly have been spared the pain of this discussion if my name had not been found in the commission recently issued for the custody of the Great Seal. Under these circumstances, it is not easy to say anything with propriety, and my wish must be to remain silent. On the other hand, silence might be construed into an acquiescence in the imputation of noble lords, so suddenly and miraculously inspired with a passion to correct abuses, and to limit the power of the Crown."

He then made a long and dexterous statement, showing, that the salary of the Chief Justice of the Court of Common Pleas had been permanently raised in a lawful manner, on account of its former inadequacy; that the custom of putting the Great Seal into commission, and making the judges Lords Commissioners, had subsisted since the Revolution, as well as before, without the slightest objection from any the most furious reformer; that exigencies had from time to time occurred, and would continue to occur, when this course must be adopted for the good of the public service; that the hopes and fears of judges could not be excited by such appointments, which were rare, and known to be only temporary; that the "good old Whig," Sir Joseph Jekyll, and other judges celebrated for their integrity and high spirit, had acted as Lords Commissioners of the Great Seal, without complaint or suspicion; that the present state of business both in the Court of Chancery and in the Courts of Common Law proved that no injury had been sustained by the suitors; and that the character of the Judges was as much venerated as ever

in this country, notwithstanding the attempts to assail it by some noble lords, the instruments of others who knew better, and did not dare openly to support what they instigated.—Still the Government was afraid to meet the motion with a direct negative. The previous question was put and carried without a division.\*

When this Government was formed, Wedderburn and Charles Fox looked rather shily at each other; but it would appear by the following letter from the Secretary of State to the First Commissioner of the Great Seal, that a strict intimacy soon subsisted between them, as if they had always taken the same views in politics:—

“You will have heard before this, that the Empress has put in effect her resolution with respect to Cuban and Crim Tartary, without any resistance whatever. The French are extremely chagrined at it; but whether their dissatisfaction will have any consequences or not, remains to be seen. I rather think not. I confess I think the event a very important one; and, if it has the effect of introducing a new naval power into the Mediterranean, a very good one for this country.

“I believe I may now venture to say that the definitive Treaty will certainly come signed in the course of a week or ten days at farthest.

“I believe I have told you all that you can have any curiosity about in this part of the world, except that there is a report of Lord Ashburton being dead, which is so likely that I am inclined to believe it.

“I am, very sincerely, my dear Lord,

“Yours ever,

“C. J. Fox.

“Wimbledon, 24th August, 1783.”

He was not admitted into the Cabinet, but he seems to have been on the most familiar terms of intimacy with all the members of it. The following is a very confidential communication to him from the Duke of Portland, respecting the adjustment of a quarrel with the King:—

“MY DEAR LORD,

“The reception I met with in the closet was so gracious that I know not how to describe it; and I am almost ashamed to mention the very full apology that was made for the harsh terms which had been used in the letters I took the liberty of showing you.”\*

At last the resolution was taken to put a violent end to the Coalition Government. The very hour when Mr. Fox pre-

\* 23 Parl. Hist. 974.

Ross. MSS.

sented his India Bill at the bar of the House of Peers, Lord Temple, who had proclaimed out of doors the King's disapprobation of it, and that all who supported it were the "King's enemies," protested against it as an *infamous* measure, and expressed a hope that it would speedily meet the fate it deserved from their Lordships, in spite of its having been carried with a high hand in another place. Thurlow now came forward to ride on the whirlwind and direct the storm. Yet Loughborough, unappalled, showed a gallant bearing; and in answer to the opposition to the first reading of the Bill, offered so unusually and irregularly, pointed out the necessity for it, and the benefits it was likely to confer. After describing the bankrupt state of the East India Company's affairs at home, he drew a melancholy picture of the countries under their rule. "What scenes of desolation and distress do we there behold! A prince has been driven from his palace, his treasures have been seized, and he is now a fugitive through the plains of Indostan. Fertile provinces have been laid waste, wars have been unnecessarily waged, and a treaty concluded with the Mahrattas has, in fact, only led us to a new war."

The course adopted by Thurlow and the "King's friends" was, after this ebullition, quietly to allow the bill to be read a second time, to hear counsel and evidence against it at the bar, and, after trying to bring it into public odium, to throw it out on the motion that it be "committed." The speeches of counsel and their examination of witnesses seeming to be interminable, Lord Loughborough made several vain attempts to check them, but found the sense of the House to be against him. He ventured to divide against a very unreasonable application for an adjournment, to enable the petitioners to discover more witnesses,—but he was beaten by a majority of 8. He thenceforth entirely lost heart, and in the final and memorable debate on going into committee he took no part. His fears were realised, the bill being rejected by a majority of 95 to 76,—and he had before his eyes the certainty of resigning the custody of the Great Seal, that it might be delivered back to Thurlow, with whom he was now on terms of the bitterest enmity.<sup>1</sup>

While Mr. Fox and Lord North were instantly dismissed, with circumstances to mark the Royal indignation, the Lords Commissioners were allowed to retain the Great Seal for a week, that they might give judgment in several cases that had

been argued before them ; but at the end of that time they were summoned to St. James's, and surrendered it into the hands of the King, who could not conceal his exultation in receiving this trophy of his victory, although he affected to thank them for the diligent discharge of their duty while they had sat in the Court of Chancery."

The struggle, however, was not yet quite over. Although the King could do what he liked in the House of Lords, there remained a very large majority of Coalitionists against him in the House of Commons, and there efforts were making to crush the new Administration which he had formed. If these should succeed, Lord Loughborough's ambition must have been fully gratified, for his Majesty's likings and antipathies would no longer have been consulted, and to the expedient of putting the Great Seal into commission the victorious Coalitionists would not again have submitted. So violent had the ex-First Commissioner become, that he was prepared to deny the power of the Crown to dissolve or prorogue Parliament,—having gloomy forebodings as to the issue of the contest. "It is a matter of no slight doubt," he wrote in a letter to a member of the House of Commons, "whether a dissolution or prorogation (the public bills depending) be a legal exercise of prerogative. In a pamphlet of the reign of Charles II., ascribed both to Sir William Jones and to Somers, this question is very ably argued, and many authorities are cited to prove the act to be illegal in the advisers. This topic should be a little canvassed. My fears are not very strong as to a dissolution ; but I do not feel the same confidence that you and most people do upon the result of the first week. I expect to find more coldness and backwardness in the bulk of your friends to adopt any strong measure—much inolination in many to accommodate—and a general disposition to allow the Ministers to produce their plans. During the interval which these humours will afford, offers will be privately and openly made, which will divide men's opinions, and draw them off from the resolutions with which they set out."

The Lords continued for some time quietly to look on ; but  
 Feb. 4, addresses being carried by the Commons for the dis-  
 1784. missal of Mr. Pitt, followed by an order forbidding  
 the Lords of the Treasury to make certain payments, it was  
 thought fit to commence active operations in the Upper House,  
 and the Earl of Effingham there moved a resolution, "That it

is not competent to either House of Parliament to suspend the execution of the law." This was warmly opposed by Lord Loughborough, who contended that the Commons had not exceeded their constitutional powers. "The Commons," said he, "have formerly been told that they had nothing to do with the intricate and weighty affairs of state, and that their duty was only to grant money, or to deliberate upon what was set before them. But, thank God, the times are altered. Since the glorious Revolution till now, liberty of free debate and a power of animadverting on the conduct of Ministers have not been denied to either House of Parliament. It is a wise maxim in our Constitution, that the King can do no wrong; but it is a presumption of law that the King may be deceived; and, according to experience, princes are more likely to be imposed upon than other men. Upon this principle, where the Sovereign has been deceived in his selection of the most proper and able Ministers, the House of Commons, long before the Revolution, was in the habit of addressing him for their removal. I doubt not the abilities of many of the present Administration—for some of whom I have the greatest esteem—but I think they are very ill-advised in not resigning after such large majorities against them, and still more in pressing a resolution like the present, which has such a strong tendency to produce a breach between the two Houses and to create general confusion. I can tell you, your Lordships will suffer in the coming conflict. The Commons may continue to send up bills praying your concurrence, and the forms of the Constitution may be observed, but your real power will be extinguished. Your present effort is to establish an Executive Government independent of Parliament, and to set at nought the representatives of the people. Success would only insure your own degradation, and make you an appendage to Royalty." But the resolution was carried by a majority of 100 to 53, and was followed by an address to the King, acknowledging his Majesty's undoubted right to choose his own Ministers, and assuring him of the zealous support of the House in the exercise of his just prerogative.

None of the fatal predictions of ruin to the House of Lords were verified; for it was now in the situation, which at very rare intervals it has occupied, of being a rallying point for public opinion against the factious and tyrannical proceedings of the House of Commons. The nation had been exceedingly shocked by the coalition between Mr. Fox and Lord North, and

strongly condemned the votes of their representatives by which it was supported. The King, for the first time since his accession, was really popular; and many exclaimed, "Thank God, we have a House of Lords!"

However, Lord Loughborough stoutly encouraged the factional proceedings in the House of Commons, and composed the following paper of instructions for the guidance of his friends there:—

"In stating our resolution, you cannot help observing that there can be no distinction between a discretionary power by common law and one given by act of parliament; and that a discretionary power given to Commissioners of the Treasury is given in truth to them as officers of executive government—ministers—not as trustees specially chosen. The necessary effect of the principle stated in our resolution is to deny the right of either House to interfere, by direction or advice, with any part of the Executive Government in the vast circle of discretionary powers that are now and must always be lodged with it for the public service,—which would leave you nothing but the right (always difficult in exercise) of punishing. Where there is no power to prevent abuse, there will not be much power to punish.—This leads to stating from your Journals a great train of instances of such interference, and marks the necessity for it. You will then come to conclusions more general and declaratory of the rights of Parliament, as well as to the particular ones; and perhaps it will be right to frame them with a view of being communicated to us. In short, I would have a strong though temperate manifesto, explaining and asserting the rights of Parliament against the doctrines laid down in the Chancellor's speech. In doing this, you expose the wickedness and danger of that system which would throw all government into the hands of Ministers, and sink Parliament to its ancient insignificance. The Chancellor said in so many words that the best times were those in which Parliament did not pretend to interfere with the Executive Government. He must mean the reigns of the Tudors, for there have been no such times since."

A few days after, he wrote to a friend, affecting to think that the cause was prospering. "Every body is so active, that there is no occasion for any prompting. Lord N. has kept open house, and his dinners have been very lively. There is not a trace of any desertion. One or two whom there was some reason to doubt have very explicitly cleared themselves. I am persuaded that a dissolution is a resource in view; but if ever the Ministry consider the measure in detail, they will find it impracticable at such a period of the session. The report from St. James's is, that the hope of the Administration rests on an agreement with the India Company, and a bill, framed by consent, so reasonable that all moderate men must consent to



it. At the same time I hear that Johnstone,\* who knows all that transaction, says the Ministry cannot continue."

These anticipations were vain; but the pugnacious Chief Justice, during the remainder of the session, took every opportunity of assailing the new Government,<sup>7</sup> and he seems sincerely to have thought that it could not stand.

At last came the dissolution, and the hopes of the Whigs were extinguished. Their Peers luckily could not be ejected, but the members who had swelled the majorities in the Lower House against the Peace, and on the subsequent divisions, hardly ventured to show themselves on the hustings; and only a miserable remnant of them ever again saw St. Stephen's Chapel.

From the meeting of the new Parliament till the King's insanity, a period of four years and a half, Lord Loughborough's prospects were very gloomy. Lord North may almost be considered as having retired from public life. Our Chief Justice thus laments the inactivity of his old political chief on Mr. Pitt's celebrated motion for parliamentary reform:—"Lord North is rather low-spirited, and does not like to be personally attacked, or to take a very active part in any measure. He was very improperly advised to be absent yesterday on Mr. Pitt's motion, which he might have had the credit with all sober men of rejecting by a much greater majority than twenty."<sup>2</sup> By degrees the Tory section of the Coalition almost entirely disappeared, and Loughborough became a regular, zealous, and seemingly attached Foxite, having no scruples about parliamentary reform or any other Whig measure. Strange to say, Mr. Fox, Mr. Burke, and Mr. Sheridan seem to have admitted him to their confidence without the slightest suspicion or misgiving, as if he had always been a consistent politician and they had never differed from him. He was considered the leader of the Whig party in the House of Lords, and he had great influence respecting all their movements.

I cannot affirm that his advice led them to take the discreditable course of opposing Mr. Pitt's measure for June 7, 1785, establishing free trade between England and Ireland; but when it came up to the House of Lords, the pupil of Adam Smith delivered a violent speech for "protection to

\* Afterwards Sir Wm. Pultney.

Hist. 1376.

<sup>7</sup> See in particular his speech against Mr. Pitt's famous Commutation Tax, 24 Parl.

<sup>2</sup> Letter to Mr. Eden, dated "Wednesday 7th May.

native industry," contending that if there were an unrestricted intercourse between the two countries—from the cheapness of labour in Ireland, English manufactures would be ruined.<sup>a</sup> He added,—“If there are at this moment any idle and silly conceits engendering in the minds of men, of opening a trade with France, and of taking her wines in return for our hardware, I have no doubt that the good sense and enlightened policy of the nation will overturn any such speculative chimera.”<sup>b</sup>

Although Mr. Pitt's popularity increased in spite of the cry of “protection,” Lord Loughborough tried to work himself into the vain belief that there was a *reaction* in favour of the Whigs. In a letter written by him from Harrowgate in the autumn of 1785 to a friend in Ireland, after describing the “weak and disgraced state of the Government in both countries,” he observes,—“A very zealous partisan of Pitt has spent a week here, and his discourse is the most certain indication I have seen that the rage for Pitt is totally calmed. Nothing but the shame of avowing their own folly prevents his late adherents from declaring openly against him. The amusement of our society has been a theatre in a barn, which we have most regularly attended.” The Duke of Portland, under the same delusion, thus addressed Lord Loughborough:—

“I have received accounts from Scotland within these few days of the best possible disposition of the manufacturers in and about Glasgow and Paisley, who have of their own accord, and independently of any suggestion from our political friends, drawn up a sketch of an address, in which they state, in firm but discreet and well managed terms, the incapacity and weakness of the present Ministers, and with the same prudence desire a general remedy, *the particular application of which cannot be misunderstood*, and I am assured that if it is suffered to go forward it will be most respectably and generally signed. I know no person to whose judgment I can so well apply for the information necessary to enable our Northern friends to determine their conduct. I shall certainly write to Lord Sheffield, and Eden, and some of our principal friends who reside in the manufacturing counties; but, without compliment (which would be very inconsistent with the sincerity of my regard for you), there is no one who is possessed of such general knowledge of the subject as yourself.”<sup>c</sup>

Lord Loughborough, however, was sadly disappointed in the anticipations of popular favour entertained by him and his

<sup>a</sup> I fear he was now speaking against his better judgment, for he had learned better principles from David Hume and Adam

Smith, and from the debates of the Select Society.

<sup>b</sup> 25 Parl. Hist. 864.

<sup>c</sup> Ross. MSS.

Whig associates, and he soon became much dejected. The well-founded rumours circulated of violent disputes between the Prime Minister and the Chancellor afforded no consolation, for they could do no good to *him*, and his only chance of the Great Seal was upon the total rout of an Administration that now seemed more firmly established than any during the present reign.

However, he did not lose his courage. His great object was to cultivate the favour of the Heir Apparent, and the following note shows that he had made some progress in this line:—

“MY DEAR LORD LOUGHBOROUGH,

“Since I had the pleasure of seeing Lady Erskine this evening I have been thinking that it might possibly be as convenient and agreeable to you, and perhaps more so to us both, were you to come and eat your mutton chop quietly, tête-à-tête with me, about six o’clock to-morrow. I shall be happy to see you, and to have an hour’s conversation with you over a bottle of port.

“I remain, my dear friend, ever most truly yours,

“GEORGE P.

“Carlton House, Sunday night, 12 o’clock,  
April 29, 1787.” d

When M. de Vergennes’ commercial treaty with France came on to be debated,—thinking this a favourable March 6,  
1788. opportunity for exciting clamour about “native industry,” he furiously opposed it, and divided the House against the address to the Crown approving of it,—although he was left in a minority of 24 against 74.<sup>e</sup>

He gained a victory on a question not considered a party one, viz. “Whether Scotch representative peers being created British peers, they should continue to sit as part of the sixteen, or their place should be supplied by a new election.” Upon a very able argument of his against the Chancellor, the House determined, by a majority of 52 to 38, “That the Earl of Abercorn, who had been chosen to be of the sixteen peers by the treaty of Union, to represent the peerage of Scotland in Parliament, being created Viscount Hamilton, by letters patent under the Great Seal of Great Britain, doth thereby cease to act as a representative of the peerage of Scotland.”<sup>f</sup>

Yet, when Government put forth its force, all argument was unavailing, and after an admirable speech against a bill for

d Ross. MSS.

e 26 Parl. Hist. 585, 595.

f Ibid. 503.

allowing the most mischievous species of gaming that ever was invented—the insurance of lottery tickets—he was defeated by a majority of 38 to 7.<sup>g</sup>

I am much amused, and so will my *legal* readers be, with a view which Lord Loughborough gives of the office of Chancellor in Ireland, and of the state of jurisprudence in that country. Mr. Eden, who had been called to the English Bar, but had soon left it for politics, having adhered to Mr. Pitt's Government, was now engaged in the diplomatic line, in which he afterwards reaped such high reputation; but his probable promotion here being very slow, the Chief Justice of the Common Pleas thus advised him to turn to better account his favour with the Minister:—

“My project for you may seem very chimerical, but it is not half so unlikely as it once was that you should be fixed in the *corps diplomatique*. Why should you not return to your old corps and to Ireland? I have never heard of a successor for old Lifford,<sup>h</sup> who was in every respect fitted for the office, which requires much more than a technical knowledge of law. All that is wanting in that respect you would, with your application, acquire in a twelvemonth; and in half that time I am sure you would possess as much as any man at the Irish Bar. Take over with you as Secretary some clever man bred in the Register's office here, and I would engage your decrees should be more accurate and more expeditious than they have been for many years in Ireland. The country would have no objection to you, nor you to it,—and I am certain you would find that court in a little time a more pleasant station than any court of Europe.”<sup>i</sup>

Lord Loughborough, in the absence of all party excitement, seems now to have taken to study more than at any period since he left Scotland. He gives this account of himself in the beginning of 1788:—

“I have passed a month in the country, entirely alone, but very much employed. You cannot imagine how valuable a present you made me in the ‘Assizes of Jerusalem,’ which I have studied as diligently as ever I did Littleton. The result of it will make its appearance in print in the course of this year—not by my means however, but through a much better channel. Gibbon had long been in pursuit of the book for a part of his History, and as the language of it was less obscure to me than to him, I have employed myself in furnishing him with an abstract of it.<sup>k</sup> My own researches are now swelled to a very

<sup>g</sup> 26 Parl. Hist. 619.

<sup>h</sup> For an account of this Chancellor, see *antè*, Vol. VI. Ch. CXLIV.

<sup>i</sup> 12th Sept. 1787. Anckland MSS.

<sup>k</sup> The book is written in Norman French the original dialect of English law.

considerable bulk, but they have very little chance of ever making their appearance abroad, as I never can satisfy myself with any form in which they arrange themselves upon paper."<sup>m</sup>

Party politics were at this time in a most languid state, and it seemed as if the rest of the King's reign were to slip away in drowsy repose: yet the following year was one of the most stirring in our annals.

It was ushered in by the impeachment of Mr. Hastings. Throughout the whole course of this protracted trial Loughborough and Thurlow were pitted against each other, the former zealously taking part with the prosecutors, and the latter with the accused. The Lords first had to determine a question upon which the result mainly depended,—“Whether each charge was to be conducted and determined separately, or the managers were to finish their case on all the articles of impeachment before Mr. Hastings was to be called upon to enter upon his defence?”

Lord Loughborough contended that the charges should be taken *seriatim*, urging that, from their multifariousness and entirely distinct and separate character, justice could not otherwise be done between the parties. Thurlow, of course, took the other side, and succeeded by a majority of 88 to 33,<sup>n</sup> —which was considered tantamount to a verdict of acquittal,—although this was not formally pronounced till many years after, when Loughborough had become Chancellor, and Thurlow was reduced to the rank of the junior peer.

During this session, in opposing the East India Declaratory Bill introduced by Mr. Pitt, the new Foxite took occasion to deliver a laboured panegyric upon his present Chief. Among other things, he said, “The bill of my right honourable friend, like his own mind, was manly and open. He was above the meanness of concealment, and scorned the scandalous baseness of a lie. My right honourable friend asserted, and asserted openly, that patronage and power were inseparable; and as the best possible guard against abuse, he placed the patronage of India in the hands of honourable men, with complete responsibility. What did the other bill do? Expression fails me. I can find no adequate term to describe its operation—short of the Old Bailey. It stole the patronage, and put it in the pocket of the Minister. Delusion is now over, and misrepresentation and falsehood stand refuted and detected. My right honourable friend has reason to be proud of his present

<sup>m</sup> 12th Jan. 1788. Auckland MSS.

<sup>n</sup> 27 Parl. Hist. 56, 63.

position. Out of place, he possesses patronage,—and patronage of the noblest kind—the protection of defenceless millions,—a species of patronage more congenial to his mind than the giving away of satrapies. The unremitting exercise of this patronage is the best answer to the calumny and slander which, in the hour of popular phrenzy, industrious clamour had cast upon his name. My right honourable friend will go to the next general election confident of success, appealing to the two India bills,—his of 1783, as commented upon by its enemies, and his rival's of 1784, as now explained by its friends.”—However, he could only muster 28 peers to divide against the Government. In reality, the nation had as yet in no degree forgiven the “Coalition,” and placed increasing confidence in Mr. Pitt, which would have been proved if a dissolution of Parliament had then taken place.

But when there was no murmur of party strife, and Mr. Fox, abandoning objects of ambition, solaced himself in the soft climate and classic scenes of Italy, the monarchical power in the Constitution was suddenly in abeyance, and the two Houses of Parliament were called upon to supply the deficiency.

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## CHAPTER CLXX.

### CONTINUATION OF THE LIFE OF LORD LOUGHBOROUGH DURING THE DISCUSSIONS RESPECTING THE REGENCY.

I AM enabled to let in a flood of new light upon this interesting portion of our history. It has always been notorious that Lord Loughborough was the chief adviser of the Prince of Wales and of the Whigs when the royal authority was suspended; but little has hitherto been known of the measures which he urged. Had they been adopted, they probably would have led to civil war, and it is impossible to defend him from the charge of rashness and recklessness in proposing them. I adhere to the doctrine, that when the two Houses of Parliament, on due inquiry, have found and resolved that the Sovereign is disabled by mental infirmity from exercising the functions of Royalty, the next heir to the Throne is entitled, during the continuance of this disability, to carry

on the Executive Government as Regent, with the same authority as if the disabled Sovereign were naturally dead;—instead of admitting that upon such an emergency power is vested in the two Houses of Parliament to elect as Regent whomsoever they please—to confer upon him, or withhold from him, any of the prerogatives of the Crown,—and to transfer to another, at their pleasure, any portion of the royal patronage. The view of the question which is consonant to our monarchical constitution would probably have met with general acceptance, but for the circumstance that it suited the interests of an unpopular party, and would have been fatal to an Administration which deservedly stood high in public favour. We shall find that Lord Loughborough, although he did not openly recommend a course different from this, and although he stoutly denied that he had ever done so,—in reality pressed the Prince of Wales to supersede the constitutional jurisdiction of Parliament, and, by his own authority, to place himself upon the throne during his father's lifetime.

His Majesty's indisposition, although it had been coming on for some months, was long anxiously concealed from the public; but in the end of October and beginning of November it was so much aggravated, that rumours of it were spread abroad. Lord Loughborough had heard nothing beyond these, when he received the following note:—

“The Duke of York presents his compliments to Lord Loughborough, and having a commission of the utmost consequence from the Prince of Wales to communicate, desires he will do him the favour to come to Carlton House as soon as he conveniently can.

“Carlton House, 4 o'clock, Thursday, 6th Nov.”<sup>o</sup>

Immediately obeying this summons, all the details of the royal malady were disclosed to him, and he was told that to him, in the absence of Mr. Fox, the Prince must look for counsel; that a confidential communication would be made to him daily, upon the state of the King's health; and that he must, as a great constitutional lawyer, consider what steps ought to be taken in such an unprecedented emergency.

The person who acted the most important part at this time is as yet not much known to fame,—Mr. J. W. Payne, the Prince's private secretary. This obscure, good-natured, but not very profound or trustworthy individual, had much influence over the mind of his royal Master, and was actuated

by a keen love of intrigue. Accordingly he opened separate negotiations with the two rivals and enemies,—Lord Loughborough and Lord Thurlow,—holding out to each the certain prospect of favour under the new *régime*, which might be expected speedily to commence. He was stationed at Windsor, where the Prince had established himself to watch over his father's illness.

The following are letters which he wrote to Lord Loughborough :—

“ 7th Nov.

“ MY DEAR LORD,

“ In situations of difficulty and moment, one generally looks to those friends, who from presuming are most willing, we know also are most able to administer advice. On this presumption, I shall make no further apology for troubling you.

“ I am sorry to tell you, his Majesty is now in a very alarming situation ; *so bad*, that I fear his dissolution is almost the best that can be hoped. He has at present, with a more considerable degree of wandering, a most violent heat, accompanied at the same time with a great chillness : every moment we fear something dreadful.

“ Knowing the friendship and opinion the *best of friends* entertains for you coincides so much with my own, I venture to say to you at a time when he sees nobody, that if anything can suggest itself that can be of use, I shall be happy to be made a vehicle of to his advantage. He has this morning talked to me of rejecting any rule, where somebody was not united to him. I told him, I was persuaded he would be advised to the contrary by his best friends, on the truest principles of public good, if any unfortunate accident should happen. I speak my mind freely to him without much prejudice, and therefore I only mention this to you as it passed.

“ I need not say to you, I beg I may not be understood to have had any communication with you on this subject, as I have no authority for so doing, and therefore you need not acknowledge any such. Seeing the Prince as much as I do, I am anxious to have the best opinions, and those I know to be most friendly to him, during his great agitation of spirits, in which he displays the most filial and affectionate duty and regard to a very unhappy family.

“ I have been up two nights, and a most violent headache will not add to the coherency of saying any more, than that I am,

“ Most sincerely and obediently,

“ Your Lordship's faithful serv<sup>t</sup>.

“ J. W. PAYNE.

“ Friday, 8 o'clock at night.

“ If you should have any thing to say, direct to me at the Prince's at Windsor ; but I hope to be in town the day after to-morrow for a few hours.”



"Nov. 9th and 10th, 12 o'clock at night.

"MY DEAR LORD,

"I received your first letter this morning in bed, and as the Prince was then asleep, I waited till he was up to communicate the contents of it. I shall best give you his reception of it in his own words:—'Tell Lord Loughborough I am persuaded no less of his attachment than I desire him to be of mine, and shall always receive his advice with the same *great* degree of pleasure I do upon this occasion, and without which I shall not act for any material decision of my present delicate situation.' I can add on my own part, that he expressed the highest respect for all the sentiments contained in it, and which I am convinced will not be lost upon him. As I wrote fully to Sheridan on the subject of his Majesty's situation, I was on the point of addressing myself to you on the subject of your last letter, which I had just received, when I was called away; so I despatched the messenger with what was finished, that you might have the communication contained in it before you went to bed; since when, matters have gone worse, and continue to increase with the night; but as I do not mean to send this letter till I am up, I will give you the particulars at that time. The Prince has been just applied to, to lay his commands upon all the officers and servants to obey implicitly the directions of the physicians, with respect to the force that might be necessary to use in the course of the night, as their patient was growing much more peremptory; and from what I can understand from the *best* authority, the *last* stroke to this unhappy affair cannot be far off. It is what every person in a situation to see, is obliged to wish, as the happiest *possible* termination to the present melancholy scene.

"I took the liberty of mentioning to the Prince the very liberal accommodation of your conduct in promotion of his service. He said, 'Well, if the C. chooses to remain where he is, Lord L. can have the Privy Seal or President for the present, and settle the other arrangement afterwards, if it is more to his mind.' I tell you this only in strict confidence, as I have no authority to say it; but the regard I know *he* bears you assures me *he* would think all precaution of secrecy unnecessary with you. I have not yet read to *him* the contents of the transcript enclosed in your last, nor the declaration that accompanied it, as he is now very much fatigued; but it shall be the first thing I do in the morning. I have, however, informed him of the receipt of it, and he desires me to thank you for it.

"I need not suggest to your Lordship's better judgment how material it is that there should be no appearance of the *smallest intercourse* between *this place* and town, as it might serve to inflame *some certain people*, who, I have reason to think, are not quite convinced that a *reform* might take place; and all active communication where you are may be well enough accounted for, and expected, without a certain person (who sees nobody) be supposed to be informed, or at least be engaged in it. The person I allude to said to me to-night, 'I hope Lord L. and S. are in close communication together on this occasion,' and I

assured him I knew that you were both privy to everything each other did ; at which he was much pleased.

"I trust to your Lordship's friendship to myself, no less than your known zeal for H. R. H., for a free communication of your advice on the present occasion, as I cannot flatter myself I can be of any essential service to the *person* I am most obliged to, more than in being the medium of conveying more worthy opinions than my own, and I trust I need not add, that nothing you can say shall not be as sacred as in the repository of your own bosom.

"Half-past ten, Monday morning.

"The King's fever is hardly anything to-day ; his pulse is not much above 70. The *other* distemper fixed, and no appearance of the smallest abatement with the amendment of his health. I think something must soon be thought of ; for I think all secrecy with regard to his Majesty's situation any longer almost unadvisable. Pray give me your opinion.

"Ever, my dear Lord, yours, &c.,

"J. W. P."

"10th Nov., Monday night."

"MY DEAR LORD,

"I have just now received the favour of yours, and am sorry I can give no better accounts on the subject of it ; the King continuing in the same situation. I am happy to find your Lordship's opinion so strongly corroborate my own. An Act of Regency must necessarily precede the occasion for the exercise of it, as the third state would be wanting to give force to it. No law can be passed before that chasm is filled up, and the succession must be to the uninfringed right of the past inheritor, only subject to a *possible* resumption in case of competency. Some form may perhaps be necessary in requesting the next heir to assume the reins of government ; but the first occasion of publick business must be the time, and that cannot be long postponed. The Prince's task seems to me to be an easy one. He is far from anxious to interfere of his own will, and nothing can possibly proceed without application to him : King William, in a weaker degree, seems to my recollection to be a case in point, if at least I am correct in the remembrance of it. Was he not desired to take charge of the government ; and when the legislation of the country was thus completed in its three branches, that it proceeded to ratify it by law ? I have nobody within reach to borrow the least light from, that I dare speak to on the subject, but am happy to find the discussion of it in such good hands. I shall direct the messengers to call on you, and you may rest assured that your letters can by no accident come under the perusal of any other individual than the one you allude to. Before any decided measure is decided on, it is necessary, I think, you should see the Prince, and he says as soon as he has seen S. he will contrive it ; but he is extremely jealous of seeing more than one person at a time, and that not by way of *consultation*, but in private friendship. He said to me to-night, he thought it had better be done by your com-

ing to your farm, and thence to Bagshot; but more of this hereafter, of which I will give you the earliest intimation. Take no notice, however, of this communication for the present."

"Tuesday Morning.

"His Majesty continues just the same; he has eaten a hearty breakfast, and has no fever; but a *total* deprivation continues.

"I am ever, my dear Lord,

"Most faithfully yours,

"J. W. PAYNE." P

The next communication which Lord Loughborough received was from Mr. Sheridan:—

"MY DEAR LORD,

"Every thing remained late last night at Windsor without the least amendment, and in consequence of a consultation of the physicians, they are, I believe, ready to give a decided opinion.

"The Prince sends Payne to town this morning. I shall make an attempt at setting his head a little to rights, if possible, for he is growing worse and worse, but a few words from your Lordship will have more weight. Among other things, he tells me he has suggested to the Prince to write directly to the Chancellor, and he tells me that the letter shall be so worded that either he or I may deliver it, so that I suppose his notion is to bring this negotiation into the same train and footing as Lord Sandwich's. It is really intolerable, and I mean to speak very plainly to him. I will endeavour to have the honour of seeing your Lordship this morning; if not, at Lord North's in the evening.

"I have the honour to be, with great truth and respect,

"Your Lordship's most sincere and obedient,

"R. B. SHERIDAN.

"Wednesday morning." Q

The following is Lord Loughborough's answer to Mr. Payne, —to be shown to the Prince of Wales:—<sup>r</sup>

"MY DEAR SIR,

"I can with truth assure you that my attention has never deviated to any other affair than the subject of our conversation, from the moment I received last Thursday an order to turn my thoughts to it. I should feel an equal pride and happiness, if it were in my power to contribute in the smallest degree by any possible exertion of zeal to the ease and tranquillity of H. R. H. in so trying a situation as Providence has prepared for him. I consider that there are but three possible events in immediate expectation:—an ambiguous state of the King's disorder; an evidently decided state; or a sudden termination, which

can be looked for only in one way ; for an entire and speedy recovery seems to be beyond the reach of any reasonable hope. In the two first cases, it is the result of my most deliberate judgment that the administration of government is as directly cast upon the Heir Apparent, as the right to the crown is in the last case. All are alike the act of God, and the law of England knows no interval in which there can be an interregnum ;—but holding, as I do, the principle of right to be as distinct and plain in the extraordinary, as it unquestionably is in the ordinary case of a demise, it must be allowed that there would be some material difference in effect. No precedent can be found except one little known, and in times where both the frame of the government and the manners of the age were so little similar to what they now are, that it would be of no authority. In a case, therefore, supposed to be new, men would be for a moment uncertain by what rule they were to be guided ; and upon a supposition of an ambiguous state of the disorder, great industry would be used to prolong the state of suspense. Every appearance of favourable intervals would be magnified, and the apprehension of a change would be studiously excited to prevent the public opinion from attaching itself to the apparent acting power. To oppose this, great spirit and steadiness would be necessary ; but I have no doubt that the only measure would be, to assert that authority which no other person has a right to assume, and which, with an united royal family, no opposition would be able to thwart. Wherever any precedent occurs in which a declaration of the King's pleasure is necessary, that declaration must be made by the only person who can be legally presumed to be authorised to make it. The case of an evidently decided disorder is attended with very little embarrassment. There would be no expectation of change to encourage and rear up an opposition to the full acknowledgment of the right to the administration of government. It would be declared to the nation by Parliament without restriction, for any partition of authority I hold to be totally inconsistent with the frame of our government, which has provided a sufficient control in the Parliament, and admits of no intermediate and secondary control. I doubt not but some wishes might be entertained for the purposes of private ambition to create councils and devise restrictions, but they would terminate, as they ought, in the confusion of those who had the presumption to propose them.

“The third case is not new. There are known forms to be observed, which should be carefully inspected and prepared. The most essential is, a declaration to be made and entered at the first meeting of council ; the substance of which should be well considered and digested, because it would be taken as an indication of the spirit of the future Government. It should be short, general, and at the same time satisfactory to the public on the great lines of policy. I have not the least apprehension of any mischief, or even inconvenience, that can arise to H. R. H., but from his own virtues. It may sound harsh, and you will with some reason impute it to the coldness of age, when I say that the duties of public life in the highest state of human greatness may often require—not dissimulation, for I hold that unworthy maxim for govern-

ment to be equally false and foolish,—but a certain reserve and guard upon the frankness of that amiable disposition which is the ornament and delight of society. I should be completely the old man if I should permit myself to run on further. You will excuse, and I am sure not expose, a too forward zeal, from, my *dear* Payne,

"Yours ever,

"LOUGHBOROUGH."

The meditated *coup d'état* is more clearly developed in the paper now lying before me, written in pencil by the hand of Lord Loughborough. Of this I subjoin an exact copy. I have been informed that he himself read it to the Prince at a secret interview which they had together at Windsor:—

"Upon the supposition of a state of disorder without prospect of recovery or of a speedy extinction, the principle of the P.'s conduct is perfectly clear. The administration of government devolves to him of right. He is bound by every duty to assume it, and his character would be lessened in the public estimation if he took it on any other ground but right, or on any sort of compromise. The authority of Parliament, as the great council of the nation, would be interposed, not to confer, but to declare, the right. The mode of proceeding which occurs to my mind is, that in a very short time H. R. H. should signify his intention to act by directing a meeting of the Privy Council, where he should declare his intention to take upon himself the care of the State, and should at the same time signify his desire to have the advice of Parliament, and order it by a proclamation to meet early for despatch of business. That done, he should direct the several Ministers to attend him with the public business of their offices.

"It is of vast importance in the outset, that he should appear to act entirely of himself, and, in the conferences he must necessarily have, not to consult, but to listen and direct.

"Though the measure of assembling the Council should not be consulted upon, but decided in his own breast, it ought to be communicated to a few persons who may be trusted, a short time before it takes place; and it will deserve consideration whether it might not be expedient very speedily after this measure, in order to mark distinctly the assumption of government, to direct such persons—at least in one or two instances—to be added to what is called the Cabinet, as he thinks proper. By marking a determination to act of himself, and by cautiously avoiding to raise strong fear or strong hope, but keeping men's minds in expectation of what may arise out of his reserve, and in a persuasion of his general candour, he will find all men equally observant of him."

It would further appear, from another paper, which is likewise in Lord Loughborough's handwriting, that he had at one

time contemplated a scheme of supplying the royal authority by a "phantom," somewhat like Thurlow's, which he afterwards joined in ridiculing so severely. According to the constitution of this country, the Sovereign may assign any part or the whole of the royal authority to be executed by a deputy or deputies;† and the suggestion was, that a commission should pass the Great Seal in the King's name, although without his consciousness, appointing the Prince of Wales Regent:—"On the supposition of a certain though slow recovery, would it not be the natural course to commit to the Prince, in the name and by the authority of the King, the power of administration, with no other restriction than such as honest advice can suggest, and honourable engagements can secure? Could that fail to be the mode adopted, were the royal family united as it ought to be? And, to accomplish both these ends, is it impossible to establish a confidence between those who fairly mean the public good? On the contrary supposition, that a recovery is not certain, the conclusion would not much vary. In my mind, it would not vary in any respect."

But we are left totally in the dark as to the ingenious contrivance by which Thurlow was to be induced to put the Great Seal to such a commission. The office of Chancellor might have purchased his consent; but this was to be held by the contriver himself.

The following is the "declaration" which was sent by Lord Loughborough to Windsor, and which is alluded to in one of Mr. Payne's letters. I am at a loss to understand whether it was to be read by the Prince in Council as Regent after he had seized the government, or whether it was written in contemplation of the immediate death of George III., which had several times been supposed inevitable,—and so was to be the speech of George IV. reigning in his own right:—

"I feel, more than any other person can, the unspeakable misfortune that the nation and I have sustained by the melancholy occasion upon which you are assembled. The weight of the important duty I am called upon to discharge, by undertaking the government of this great empire, can only be alleviated by the consciousness of the entire affection I bear to my native country, and of the most ardent zeal for promoting its domestic welfare and its just consideration amongst the other states of Europe. Animated by such sentiments, I shall not

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† Of this we have still instances in giving the royal assent to Bills, and in opening and proroguing Parliament.

doubt the assistance of every honest man in my unceasing endeavours to maintain and strengthen the religion, laws, and liberties of my kingdom. The constitution in church and state which my family was called to defend, shall ever form the rule of my government, and it shall be my constant study to improve the blessings of peace with the protection of the Divine Providence upon my dominions, in the support of public credit and the encouragement of agriculture, manufactures, and commerce."

But on the return of Mr. Fox from Italy all these vagaries were swept away. He was confidentially shown Lord Loughborough's suggestions, but he earnestly requested that the noble schemer should not know that he had seen them.

Accordingly, as if things had been quite entire, he opened a negotiation with the Chief Justice by the following note:—

"MY LORD,

"I should be happy, if it is not troublesome, to have half an hour's conversation with your Lordship upon the subject of the measures to be taken by the Houses of Parliament, in case a notification to them should take place, which, according to public rumour, the state of his Majesty's health renders but too likely. It may be proper for me to state previously (though probably your Lordship knows too much of what is passing to make such information necessary), that I wish to speak merely for myself and a few friends, and have no authority from, nor indeed any communication with, any person of higher station. The very circumstance of my applying to your Lordship will also satisfy you that I mean to treat this business as wholly unconnected with general politics, about which I am afraid our sentiments still continue to be widely different. All I wish is a conference, as a member of Parliament with another member, upon a subject of very great importance, upon part of which at least our opinions are likely to be similar. I am sure I need not add, that any desire of finding out such of your Lordship's intentions as you may wish to be secret is what I am wholly incapable of. I will call in a few minutes for your answer, in case it should be convenient for you to see me now. If not, I will trouble you to let me know at what time I shall wait upon you—unless you had rather decline the conference altogether—in which case, as I have certainly no right to claim it from you, I beg you will tell me so without ceremony.

"I am, with great regard,

"My Lord,

"Your Lordship's obedient servant,

"Thursday.

"C. J. Fox.

"I am at Thomas's Hotel, Berkeley Square." u

They met; and the notion of superseding the authority of Parliament being declared inadmissible, it was speedily agreed that the constitutional course should be pursued of calling upon the two Houses to declare the King's incapacity, and to address the Heir Apparent, praying that he would take upon himself the exercise of the royal authority as Regent. No opposition by Mr. Pitt to this mode of proceeding was anticipated; and as the King's recovery was then considered impossible, the speedy advent of Whig rule seemed inevitable. In those days it was thought that the personage filling the throne, with the undiminished power and patronage constitutionally belonging to his high office, might easily give an ascendancy to any party in the state, and choose his ministers at pleasure. Mr. Fox, regarding himself minister elect, without giving any positive pledge upon the subject, pretty clearly intimated to Lord Loughborough that the Great Seal should be his. It seemed now to this often-disappointed aspirant as if nothing could come "between the cup and the lip;"—he began to calculate how many days would elapse before he must be hailed as Lord Chancellor; he feasted his fancy with an anticipation of Thurlow scowling as he laid down the bauble, and the congratulations which would be showered down upon himself as he carried it away from the Prince's closet; he thought with delight of placing it on the bar of the House of Lords, when he supposed himself to be going thither from the woolsack to receive the messengers of the House of Commons.

It is a curious fact that Mr. Fox had hitherto been kept entirely ignorant of the intrigue that had been going on between Thurlow and Carlton House. This had been begun by Payne;—and Sheridan, whether from an old grudge against Wedderburn, or from what other motive, I know not, had warmly entered into it,—so that the Prince had positively engaged that the present Chancellor should be continued under him as Regent, on condition of his supporting the plan of conferring the Regency without any restriction. When the matter was at last mentioned to Fox, the whole truth was not disclosed to him: he was not informed of personal interviews which had taken place between the Prince and the Chancellor at Windsor, and the arrangement was represented to him as generally wished by the party. Having absolutely made up his mind to agree to it, he wrote to Sheridan:—"I have swallowed the pill—a most bitter one it was,—and I



have written to Loughborough, whose answer, of course, must be *consent*." The following announcement by him to the disappointed party must have been received with amazement and consternation :—

"MY DEAR LORD,

"I am so perfectly ashamed of the letter I am writing that I scarcely know how to begin—but my knowledge of your way of thinking, and the perfect and unreserved freedom with which we have always conversed together, gives me some courage, and induces me, without any further preface, to state to you the difficulties under which I feel myself.

"When I first came over, I found a very general anxiety among all our friends, and in the Prince still more than others, to have the Chancellor make a part of our new Administration, and (excepting only the D. of Portland) they all seemed to carry their wishes so far as to think his friendship worth buying, even at the expense of the Great Seal. This idea seemed so strange to me, considering the obligations we are all under to you, and so unpleasant to those feelings of personal friendship which I am sure you do not consider as mere professions from me to you, that I took all sorts of means to discourage it, and have actually prevented the Prince, though with some difficulty, from saying any thing to Thurlow which might commit him; and, to prevent the possibility of it, I obtained from him the message which I delivered to you, Wednesday night, from his Royal Highness. The difficulties which have arisen within these few days, and which to many seem increasing, have had the effect of increasing the anxiety of our friends for Thurlow's support; and they seem all to be persuaded that the Great Seal would gain him, and nothing else. You know enough of the nature of our party to know how rapidly notions are sometimes propagated among them, and how very difficult it often is for us, who ought to lead, not to be led by them. Under these circumstances, I must own (and I am certain you will approve my freedom in owning it, whatever you may think of my weakness) that I wish to have it in my power to offer Lord Thurlow the Great Seal, not from my own opinion of the advantages like to accrue from such an offer, but from the dread I have, if things turn out in any respect ill, of having the miscarriage imputed to my obstinacy. The invidious point of view in which you would stand yourself in such an event, rather adds to my anxiety; for although they all know the handsome offers you have made, and therefore that the whole blame ought justly to lie on me alone who refused them, yet it is not pleasant to be looked upon as a person whose pretensions, however just, have stood in the way of the success of a party. I have related to you most freely the difficulties of my situation, and I should really take it ill if you answered me but with the most unreserved freedom. If you can call here, it would be best; but if you cannot, pray let me have a line, though I know your answer; and the more certain I am of it the more I feel ashamed of this letter. I really feel

myself unhinged to a great degree, and till I see you, which I hope will be soon, or hear from you, shall feel very unpleasantly. I feel the part I am acting to be contrary to every principle of conduct I ever laid down for myself, and that I can bring myself to act it at all I strongly suspect to be more owing to my weakness than my judgment.

"I am, with the sincerest friendship,

"My dear Lord,

"Yours ever,

"C. J. Fox,

"St. James's Street, Saturday morning." \*

Loughborough, in the anguish of his soul, wrote to Sheridan the long and resentful letter which I have introduced in the life of Thurlow.<sup>7</sup> But he contented himself with a few formal lines to Fox:—

"MY DEAR SIR,

"I will frankly confess to you that the measure appears to me a strong indication of weakness, and I am deceived if it will not be generally so felt as soon as it is known. This affords additional reason why, even on motives of prudence, I should acquiesce in it, which I do, I assure you, without the smallest interruption of those sentiments of friendship and confidence with respect to you or the Duke of P., which will ever remain in my heart.

"I ever am, my dear Sir, yours,

"LOUGHBOROUGH.

"Guildhall." \*

Though told that he was excessively ill-used, and taunted by some old Tory friends for his credulity in believing that the Whigs would really do him a kindness, and advised to return to his old colours, he steadily adhered to the cause of the Prince of Wales and Mr. Fox,—and he strenuously defended the constitutional doctrine upon which they rested the hereditary right of the heir apparent.<sup>a</sup>

A rumour having been spread of the arbitrary advice he had given, that the Prince should, by proclamation, assume the government, and issue orders to the Parliament, to the army, and to the magistrates, he thought himself justified in disclaiming it, and he actually supported the motion for the

\* *Ross. MSS.*

<sup>7</sup> *Vol. VII. p. 248.*

\* *Ross. MSS.*

<sup>a</sup> The world had now a whimsical instance of the manner in which the opinions or professed principles of contending factions are influenced by interest. The heir apparent being with the Whigs, they advocated the

doctrine of hereditary right, representing it as almost indefeasible; while the Tories, perceiving that they were in great danger of being driven from office if the Regent were appointed by address with unlimited powers, entirely sacrificed the doctrine of hereditary right, and, in substance, made the crown elective.

appointment of a committee to inquire into and to report to the House the state of the King's health, by an examination of the physicians who attended him,—contending that this proceeding was altogether constitutional, and according to the usage of Parliament.<sup>b</sup> When the report was presented, and Lord Camden commented upon the strange doctrine said to have been asserted *elsewhere*, “that when his Majesty's incapacity was ascertained and declared, the heir apparent, being of age, had a claim to take upon himself the administration of the government as a matter of right, while his Majesty laboured under the disorder which rendered him unable to discharge the regal functions,” Lord Loughborough rose and said,—

“I understand, my Lords, it has been asserted elsewhere, *that the Prince of Wales, the heir apparent to the throne, has no more claim to exercise the government during the continuance of the unhappy malady which incapacitates his Majesty than any other individual subject.* If the regency be elective, my Lords, such is the consequence; and the regency is elective, if the doctrine which the noble and learned earl so keenly controverts is not a part of our constitution. The question simply is, whether, upon the personal incapacity of the Sovereign, the regency is elective? No one, I believe, denies that, by the common law of this realm, and by various statutes, the crown is hereditary. Indeed, any person who, by advised speaking or writing, shall aver the contrary, is liable to be prosecuted, and incurs the penalties of a *præmunire*. How is this compatible with *election*, where there exists a competent heir apparent? There are, indeed, two supposable cases when *ex necessitate* the two Houses must fill the vacant throne, there being no heir apparent *in rerum natura*—the one where there is a total subversion of the government, by a breach of the original contract between the King and the people, as at the Revolution; and the other where the royal line should have become extinct,—a King, on his decease, leaving no heir. Where there is an acknowledged heir apparent, who must succeed on the King's natural death, may the two Houses elect another as Regent, and invest him with all the powers of royalty? He might then give the royal assent in the name of the incapacitated King to an Act for changing the succession to the crown and making himself the head of a new dynasty. It is more probable that the two Houses would set up a mock Regent, and assume the government themselves. A Regent so elected must necessarily be the slave of his electors. The single instance of an elected Regent is that which occurred in the reign of Henry VI., and led on to the wars of York and Lancaster. Then this House, by its own authority, without the concurrence of the Commons, appointed the Duke of York—Regent or Protector. Are your Lord-

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<sup>b</sup> 27 Parl. Hist. 658.

ships prepared to follow that precedent, and will its authority be conceded by the other branch of the legislature? Both Houses together now could not make a Turnpike Act, and yet we are told that they may elect a Regent. Then I suppose they may elect a plurality of Regents, and give ours the form of a Mahratta government; or put an end to the kingly office, and entirely change the constitution. What in the meantime becomes of your connection with Ireland, where the two independent Houses may choose one Regent, while you choose another; in which case the two kingdoms would be as completely severed as Portugal is from Spain? But it is said that the Prince of Wales is only a subject, and that while his father breathes he has no more right to govern than any other subject. No more right! Is the Prince of Wales a common subject? Does not the law describe him to be one and the same with the King? Lord Coke expressly declares this to be so. Is it not as much high treason to imagine or compass the death of the Prince as of the King? Is it high treason to imagine or compass the death of any other individual subject? It so happens that in this case the two Houses are duly summoned by the King's writs, and, in consequence, are legally assembled; but if, upon such an emergency, there had been no Parliament in existence, will any man say that it would not have been warrantable for the Prince of Wales, as heir apparent, to have issued writs, and called Parliament together? What becomes, then, of your assertion, that in his father's lifetime he has no more right to interfere with the government than any other subject? I maintain that by the constitution of England the regency is not elective, but depends on hereditary right; and the heir apparent is entitled, during the interruption of the personal exercise of the royal authority by his Majesty's illness, to assume the reins of government. When I make this observation, *I am very far from meaning to intimate that the Prince of Wales can violently do so without the privity of the two Houses of Parliament*; but I do solemnly maintain, that, upon the authentic notification to him by the two Houses of Parliament of the King's unfortunate incapacity, he is of right to be invested with the exercise of the royal authority."

Nevertheless, it was voted by both Houses, "that it was their right and duty to provide the means of supplying the defect of the personal exercise of the royal authority, arising from his Majesty's indisposition, in such manner as the exigency of the case may appear to them to require."\*

While these discussions were going on, the three following notes were sent by Mr. Fox to Lord Loughborough; but I am not able to ascertain their dates or the particular occasions when they were written:—

"MY LORD,

"After considering what your Lordship said, and mentioning it to

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\* 27 Parl. Hist. 853, 882.

L<sup>d</sup> F. and one other person, I think I had rather decline meeting the persons we mentioned—not so much from any objection to the meeting itself as from an apprehension of the construction that might be put upon it.<sup>d</sup> I am, with great regard, my Lord, your Lordship's obedient servant,

“C. J. Fox.

“Thomas's Hotel, Friday night.

“P.S.—I beg leave to add that I feel myself much obliged to you for the open manner in which you have spoken to me upon the subjects in question.”<sup>e</sup>

“MY DEAR LORD,

“I cannot say that I agree with you in your opinion, though I own I am inclined to think it the next best to that which I prefer of fighting in the H. of C. upon the subject of the establishment. We have a great force in town, and if the leaders will behave stoutly, I have little doubt but the troops will do so too. Can you come here to-night, or early in the morning? At all events, I cannot let slip this opportunity of expressing to you my sense of the very handsome manner in which you have acted throughout, and particularly in regard to what passed this morning.

“I am, very truly, my dear Lord,

“Yours ever,

“C. J. Fox.

“Downing Street, Tuesday night.

“I have not seen H. R. H., but expect him here every minute.”<sup>f</sup>

“MY DEAR LORD,

“If this does not find you in town, I hope it will bring you to town as soon as possible. There never was a situation that called for wise advice so much as ours, and we are driven to decision almost before we have time to deliberate. I know you have as much inclination as ability to counsel us, and every thing must depend upon what we do before we go down to Parliament this day.

“Yours very sincerely,

“C. J. Fox.

“Downing Street, 9 o'clock, Tuesday.

“I shall be here or at home all morning.”<sup>g</sup>

<sup>d</sup> The imprudence with which the Whigs conducted their deliberations at this time may be surmised from the following extract of a letter from Lord Carlisle to Lord Loughborough:—“Our open councils and our generous confidence in the secrecy and discre-

tion of the whole club at Brookes's—not excluding the waiters—has, I fear, the small inconvenience of flinging difficulty in the way of negotiations upon which the great affairs of the world turn.”—*Rossl. MSS.*

<sup>e</sup> *Rossl. MSS.* <sup>f</sup> *Ibid.* <sup>g</sup> *Ibid.*

Meanwhile Lord Loughborough's zeal was sharpened by the dazzling prospect again opening to him of being at last able to grasp the Great Seal. Thurlow having obtained secret intelligence from Dr. Addington of an improvement in the King's health, was drawing off from the Prince's party, and was looking out for an opportunity to imprecate curses on his own head when he should forget his Sovereign. Mr. Fox, rejoicing that he was freed from the promise given without his knowledge, and that it was now in his power to realise the hope which he himself had held out respecting the Chancellorship under the Regency, made this communication to Lord Loughborough:—

“MY DEAR LORD,

“I could not collect from the conversation yesterday much of what is like to be the course of Thurlow's argument. He seemed to think it a more confused and difficult case than it has ever appeared to me; and therefore, if I were to guess at all, I should suspect that he will choose rather to answer the arguments of others than produce many of his own. My general conclusion from this part of our conversation, as well as that relative to restrictions, was, that he had thought less upon the subject than I should have supposed possible.

“The negotiation is off, with an express desire on his part that no more may be said to him on the subject till the Regency is settled, and *advice* to the Prince to make his arrangements without any view to him. It was much the pleasantest conversation I have had with him for many years. Upon the business of our interview, he was perfectly open and explicit, and dismissed the subject as soon as possible with perfect good-humour, in order to talk upon general ones in our old manner of conversing. He was in a talkative humour; and France, Spain, Hastings, Demosthenes, and Cicero were all talked over as if between two friends who had neither political connection nor enmity. In short, I think the negotiation is fairly at an end; and if, when the Regency is settled, the Prince wishes to revive it, it must be considered as a proposition entirely new, and treated upon that footing.

“I am very sorry to hear that nothing has been done about a protest, nor do I know whom to employ, as I am going out of town, without an intention to return till Monday. My opinion is that it should be very strong in its expressions; and the danger of putting the unlimited power of legislation into the hands of the two Houses of Parliament explained at large.

“I am, my dear Lord, yours ever,

“C. J. Fox.

‘St. James's Street, 26th Dec.

“If I were to tell you the advantage my health and spirits have received from our conversation yesterday morning, you would perhaps

think either that I exaggerated, or that I am weaker than a man ought to be." <sup>h</sup>

When the resolution came to be debated against the Regent being allowed to make Peers, Lord Loughborough was particularly severe on the suggestion of Lord Camden, that if there was an urgent necessity for a new peerage it might be created by Act of Parliament. He showed the mischief of encouraging any such idea to obtain ground, and urged the danger of its being considered sanctioned even by the opinion of any one individual Peer of Parliament, in debate:—

"Let me remind your Lordships," said he, "that although a Peerage Bill may originate in a message from the Regent, the Commons would immediately be let into their share of creating a Peer; the honour of the Peerage would be put to the vote, and thence a most unparliamentary interference of the other House with the constitution of your Lordships' House would be established—a doctrine too monstrous to be endured for a single moment! The public good requires that the entire free and unrestrained power of creating Peers should remain with the Executive Government, and your Lordships should recollect the ancient mythological fable representing the Temple of Honour as placed behind the Temple of Virtue, indicating to us that a peerage should be conferred for great public services, and not for practising the arts of a demagogue."<sup>i</sup>

With a view to make the Regency Bill and its author as odious as possible to the Prince, Loughborough pointed out the insulting nature of the restriction against alienating the King's private property, and felicitously quoted a legal decision, in which it was held by the Judges to be a libel for one man to send to another the commandment out of the Decalogue, "THOU SHALT NOT STEAL," as it implied that the person to whom it was sent was a thief.<sup>k</sup>

Having in vain attempted to resist the very unfair proceeding of putting the question jointly on the two resolutions, "That the Queen should have the custody of the King's person—and should likewise have the appointment of all officers of the household"—acknowledging the fitness of the former, he proceeded to combat the latter with great boldness and vigour:—

"In discussing this subject," said he, "it is very material to bear in mind that the object for which the monarchy is established is the good

<sup>h</sup> Boesl. MSS.

<sup>i</sup> 27 Parl. Hist. 1067.

<sup>k</sup> Ibid. 1082.

of the people, and that our constitution is framed upon the principle of vesting in the Monarch only that portion of power and influence which is necessary for carrying on the Executive Government. But from party motives, or a mockery of adulation to the afflicted Sovereign, (who, if he were conscious of your proceedings, could not decently be supposed, from jealousy of his son, to approve them,) having curtailed the salutary prerogative of the Crown, you are now going to deprive it of its patronage. You are establishing two Courts—one of the Regent—another of the Queen,—and there may very likely be a rivalry between them. You may take a lesson from a country which, in all matters of constitutional learning, you affect to despise. Louis XIV. conceived a dislike to his nephew the Duke of Orleans, and, wishing to aggrandize his own natural son the Duke de Maine, by his will left the administration of public affairs to the Duke of Orleans, as Regent, and the control of the household, with the custody of the person of the infant King, to the Duke de Maine. The will was duly registered in the Parliament of Paris; and the Duke of Orleans was told by the royal testator that he was to enjoy every thing to which his high birth entitled him. But when Louis XIV. died, the Regent, now heir presumptive to Louis XV., by the renunciation of the Duke of Anjou, then King of Spain, claimed all the powers and privileges which properly belonged to the Regency. The Parliament felt itself in an awkward dilemma. It saw the danger of yielding to the claim of the heir presumptive; but it likewise saw the absurdity of placing the Regent at the head of the Government, and placing in the hands of another the means by which the government was to be carried on. Wisely weighing all the difficulties of the case, and preferring the lesser evil to the greater, the Parliament set aside the late King's will, and invested the Regent with all the authorities of the Crown. It is said her Majesty is to be assisted by a council—which will only make matters worse, by rendering her section of the government more conspicuous, more efficient, and more mischievous. Around her all will rally who are dissatisfied with the Regent because he has so little to bestow, and foreign ministers will intrigue with her councillors when they cannot carry a point they are pressing on the responsible Ministers of the Crown. We have such idle reasoning in defence of putting the patronage of the household in the hands of the Queen—as that the King would feel his mind disturbed when awakened from his trance, if he found that his lords and grooms in waiting had been removed from about his person. Suppose that his Majesty's trance had taken place some years ago, would it have been any consolation to him if his Ministers, on their first audience after his awakening from it, had thus addressed him: 'Your Majesty has lost thirteen colonies, but—your palace stands where it did! Millions of national debt have been accumulated, but—your lords with white staves stand where you left them! Much of the best blood of your subjects has been spilt, but—not a page of the back stairs has been removed! Many calamities have happened in consequence of your son and representative being deprived of the constitu-



tional power which your Majesty enjoyed, but—be not concerned, the same beef-eaters, holding the same halberds, still surround you! Weep not for national disgrace and universal suffering, for peruse the Red Book, and you will find it as you left it!!!” When his Majesty is restored to reason, he will feel insulted by those who impute to him such paltry and childish considerations, instead of the enlightened patriotism which belongs to the father of his people.”<sup>m</sup>

But the resolution was negatived by a majority of 94 to 68.<sup>n</sup>

When the Prince of Wales received the proposal from Mr. Pitt, that he should accept the office of Regent under the mortifying restrictions to be laid upon him, he immediately wrote the following note to Lord Loughborough:—

“MY DEAR LORD,

“I have just received a letter from the Minister, with such restrictions as no Dictator <sup>cd</sup> possibly, I think, ever have been barefaced enough to have brought forward. Pray come to Charles’s as soon as you possibly can, to take these matters into consideration.

“I am, my dear Lord,

“Most truly y<sup>r</sup>

“G. P.”

Lord Loughborough attended the meeting, and concurred in the prudent advice that his Royal Highness—protesting against the course which was followed—should still, for the public good, conform to the wishes expressed by a majority of the two Houses.

He took no part in the subsequent debates as to the opening of Parliament by the “phantom” of the Great Seal under the supposed authority of the insane Sovereign, or as to the provisions of the Regency Bill, which, however objectionable, he considered irrevocably settled by the Resolutions previously adopted. He was now desirous of seeing the Regency established as soon as possible. The Prince of Wales, having with such reluctance agreed to accept the office with mutilated powers, expressed deep resentment against the present Ministers, who, he conceived, had treated him so unhand-somely, and professed himself more than ever a devoted partisan of the Whigs. The intrigue which had induced him

<sup>m</sup> This prophecy was by no means fulfilled; for George III. looked with absolute abhorrence upon all who he was told had opposed the limitations on the Regent, or the transference of the household to the Queen. He was actuated by a belief that they had

entered, with his son, into a conspiracy to prevent him from ever remounting the throne; and in his best subsequent days he never could be convinced of his error.

<sup>n</sup> 27 Parl. Hist. 1088—1093.

to promise that there should be no change in the custody of the Great Seal had actually terminated in Thurlow taking a decided part against him, and weeping in the House of Lords at the thought of deserting the afflicted King. No doubt was entertained, therefore, that as soon as the Regency Bill had received the royal assent, by the agency of the "phantom," there would be a Whig Administration, and the Regent would have a new Chancellor. The Chief Justice of the Common Pleas had an express promise, not only from Mr. Fox, but from the Prince himself, that he should be the man.

But while the Chancellor Elect was considering whom he should appoint his secretary and his purse-bearer, and while applications were pouring in upon him, from all quarters, for commissionerships of bankrupts and livings in the Church, his hopes were again blasted. Rumours of the King's recovery, at first discredited, became stronger and stronger; and on the 19th of February, Lord Chancellor Thurlow, in the House of Lords, as soon as prayers were over, left the wool-sack, and announced that his Majesty was convalescent. He therefore suggested the propriety of suspending farther proceedings on the Regency Bill; and—casting a malicious glance at the Chief Justice of the Common Pleas—he added, "I congratulate your Lordships on the prospect of his Majesty's complete and speedy recovery, to which I am sure the wishes and prayers of *all* his Majesty's subjects are directed." In a few days George III. resumed the personal exercise of the royal authority, with the deep-seated determination, which he was at no pains to conceal, of showing implacable resentment against all who, during his illness, had taken part with the Prince of Wales. Nor could they entertain any hope that he would be frustrated in his purpose; for the nation rejoiced on this occasion in being rescued from the Whigs; the King's popularity was unbounded, and his power, for a season, was greater than that of any Plantagenet, Tudor, or Stuart who ever filled the throne of England.\*

Lord Loughborough, although banished from St. James's, continued in high favour with the Heir Apparent, and was

\* I have heard a high legal dignitary, now no more, say: "It is a remarkable circumstance that George III., at the commencement of his reign, when in the full possession of his faculties, was abused, ridiculed,

thwarted, and almost driven into exile; but when he was deprived of reason,—the nation, falling prostrate before him, called out, 'A God! a God!'"

for some time his chief counsellor. A few days after the notification of the King's recovery, he was summoned to a conference, by the following note from his Royal Highness:—

“MY DEAR LORD,

“I have received a letter from the Queen, which requires some consideration. I wish much to have your advice. Pray call upon me at five o'clock, if you can.

“Ever sincerely yours,

“G. P.

“Carlton House, half-past one o'clock,  
Feb. 21st, 1789.” P

Any attempt which he made to bring about a reconciliation between the members of the royal family entirely failed; and both the Prince of Wales, and the Duke of York, who had taken part with him, were treated by their parents with great harshness. In the Rosslyn MSS. I find, in Lord Loughborough's handwriting, the draught of a letter from the Prince to the King, which must have been written during the following summer:—

“SIR,

“Thinking it probable that I should have been honoured with your commands to attend your Majesty on Wednesday last, I have unfortunately lost the opportunity of paying my duty to your Majesty before your departure from Weymouth.

“The accounts I have received of your Majesty's health have given me the greatest satisfaction; and should it be your Majesty's intention to return to Weymouth, I trust, Sir, there will be no impropriety in my then entreating your Majesty's gracious attention to a point of the greatest moment to the peace of my own mind, and one in which I am convinced your Majesty's feelings are equally interested.

“Your Majesty's letter to my brother the Duke of Clarence in May last, was the first direct intimation I have ever received that my conduct, and that of my brother the Duke of York, during your Majesty's late lamented illness, had brought on us the heavy misfortune of your Majesty's displeasure.

“I should have been wholly unworthy the return of your Majesty's confidence and good opinion, which will ever be the first objects of my life, if I could have read the passage I refer to in that letter without the deepest sorrow and regret for the effect produced upon your Majesty's mind, though at the same time I felt the firmest persuasion that your Majesty's generosity and goodness would never permit that effect to remain without affording us an opportunity of knowing what had

been urged against us, of replying to our accusers, and of justifying ourselves, if the means of justification were in our power.

"Great, however, as my impatience and anxiety were on this subject, I felt it a superior consideration not to intrude any unpleasing or agitating discussions upon your Majesty's attention during an excursion devoted to the ease and amusement necessary for the re-establishment of your Majesty's health.

"I determined, therefore, to sacrifice my own feelings, and to wait with resignation till the fortunate opportunity should arrive, when your Majesty's own paternal goodness would, I was convinced, lead you even to invite your sons to that fair hearing, which your justice would not deny to the meanest individual of your subjects.

"In this painful interval I have employed myself in drawing up a full statement and account of my conduct during the period alluded to, and of the motives and circumstances which influenced me. When this shall be humbly submitted to your Majesty's consideration, I may possibly be found to have erred in judgment, and to have acted on mistaken principles, but I have the most assured conviction that I shall not be found to have been deficient in that duteous affection to your Majesty which nothing shall ever diminish. Anxious for every thing that may contribute to the comfort and satisfaction of your Majesty's mind, I cannot omit this opportunity of lamenting those appearances of a less gracious disposition in the Queen towards my brothers and myself than we were accustomed to experience, and to assure your Majesty that if, by your affectionate interposition, those most unpleasant sensations should be happily removed, it would be an event not less grateful to our minds than satisfactory to your Majesty's own benign disposition.

"I will not longer, &c. &c. &c.

"G. P."

I conclude this long, but I hope not uninteresting, chapter with a letter from the Prince of Wales to Lord Loughborough, showing his Royal Highness in a very amiable point of view—and leading to the charitable belief that, with much native goodness of heart, he was betrayed into his subsequent errors by the perils of his high station, and by adverse circumstances over which he had little control:—

"MY DEAR LORD,

"The excessive goodness and friendship I ever have experienced from you, makes me trespass, I assure you much against my wishes, once more upon you, hoping that you will forgive my absence this evening from a party, which I am certain, from every thing I have hitherto witnessed, must afford the greatest pleasure and delight to all whose minds are perfectly at ease, and who have nothing to occupy them but the hospitable and pleasing reception you give all your friends. But, to tell you the truth, my dear Lord, I am very unfit for any thing either

so gay or so agreeable. The anxiety I have undergone the whole of this day has worried me to death, and though, thank God, the physicians assure me that my brother is as well as can be, considering the violence of his complaint, yet I should feel miserable to leave him. Could I have the pleasure of seeing you in Bedford Square this night, I should wear the same countenance of pleasure, which I am sensible that all those who have not a sick-bed to attend naturally must do at your house. I am sure, from what I know of you, that you will feel for me, and, *for once, forgive me for the disappointment I occasion myself.*

"I remain, my dear Lord,

"Ever most sincerely your friend,

"GEORGE P.

"York House, half-past 12 o'clock, P.M.,  
July 2nd, 1789." <sup>9</sup>

## CHAPTER CLXXI.

CONTINUATION OF THE LIFE OF LORD LOUGHBOROUGH TILL HE WAS  
MADE LORD CHANCELLOR.

ALTHOUGH the Whig party was now in a very low and seemingly hopeless condition, Lord Loughborough adhered to it for several years, and continued on the A.D. 1789 most friendly and familiar footing with Fox, Sheridan, and Burke. Nevertheless, he attended little in Parliament, and from the King's recovery till the middle of the session of 1791, only one speech by him is to be found in the printed Reports: that was on the malt tax, the increase of which he strenuously resisted; but so slender was the attendance of Opposition peers, that he could not venture to divide the House, lest, being appointed teller, he should be under the difficulty of grammatically reporting to the House that there was only one NOT CONTENT.<sup>9</sup>

While Lord Loughborough continued a leader of the Whigs, he took an active part in all the measures and manœuvres of that party—even to the arrangement of seats in the House of Commons. I will copy one curious letter to him on this

<sup>9</sup> Ross. MSS.

<sup>9</sup> 28 Parl. Hist. 1202. I have heard a teller in the House of Commons say "the noes were one." He defended himself by ob-

serving, that he could not have said, "the noes was one." Q. What ought he to have said,—adhering to the established form?

subject from William Adam, afterwards Lord Chief Commissioner for jury trial in Scotland—as it gives a curious picture of the old “nomination system :”—

“MY DEAR LORD,

“The following lines are written in consequence of a conversation I Dec. 30, had yesterday with the Prince of Wales, when I had the honour 1790. to be with his Royal Highness, and in which he expressed himself with the utmost anxiety, and at the same time under difficulty about the mode of obtaining what H. R. H. has so much at heart. At the same time that I am executing the commands of H. R. H., I need not inform your Lordship how much those commands coincide with the wishes of the Duke of Portland and all our friends.

“It is understood that Lord Lonsdale has two seats yet to fill up—one for Haslemere and one for Appleby, and that he has not fixed upon the persons who are to fill those places. H. R. H. is extremely anxious that Sir William Cunyngham should be recommended to Lord Lonsdale. But under the circumstances in which H. R. H. says he stands with Lord Lonsdale, he thinks it cannot flow directly from him. What he has desired me to do, therefore, is to request of your Lordship to open this matter to Lord Lonsdale, to assure him of Sir William Cunyngham’s attachment to H. R. H., and of his being ready at any time to vacate his seat, if Lord Lonsdale should signify to him his disapprobation of his politics; and that if the Prince is referred to by Lord Lonsdale, his Lordship will find his Royal Highness most anxiously zealous for Sir William’s success.

“Ever, my dear Lord,

“Yours most faithfully,

“WILLIAM ADAM.”

After a long silence, Lord Loughborough took courage March 29, again to engage in parliamentary conflict, when 1791. Mr. Pitt had got into some difficulty and discredit by his negotiation with the Empress Catherine, and by the unpopular “Russian Armament.” In the debate which followed the King’s message upon this subject, he strongly inveighed against the foreign policy of the Government. “It is matter of serious consideration,” said he, “by what fatality it happens that year after year we are thus to be involved in disputes in every quarter of the world. If we are to travel on in this course of blind and irrational confidence, yielding abject assent to every scheme of Ministers, what must be the result? His Majesty has sent a mandate to the Court of Petersburg which the Empress has not thought fit to obey.

Is the mandate to be enforced by arms? It is fortunate that we are still on the brink of the precipice: before we plunge into the abyss below, let us pause and look around us. It is with astonishment and horror that I see the King's Ministers taking a general sweep of all kingdoms and states—meddling, irritating, and insulting. To please them we are now to be involved in a war with Russia, without any provocation and without any object! A tax has lately been imposed which deprives the labouring man of his most wholesome beverage, to defray the expenses of this wanton aggression. Do your lordships flatter yourselves that this can continue?—that by such resources you are to maintain a system of outrage, of conquest, and of depredation? I do not wish to enter into any general eulogium of the National Assembly of France; but surely their unanimous and truly politic declaration that they will for ever avoid wars on speculative and theoretical points, ought to have suggested to us a wiser course. The revolution in France pre- Feb. 27,  
sents to us the means of reducing our establishments, 1792.  
of easing the public burdens, and of securing to us for a length of years the blessings of peace.”—Afterwards he strongly supported Lord Porchester's motion for a vote of censure on Mr. Pitt, for the armament against Russia, saying, “I rejoice that the negotiation has terminated amicably; but it now becomes necessary to inquire whether arming the country was necessary, and what good end it has answered? I admit that this country has an interest in the affairs of the Continent, and in the conduct of Russia towards the Porte; but when you had armed, you receded. It is impolitic to drum to arms, and to be afraid to strike a blow. In my humble opinion an armament and the intention to use it ought never to be disjoined. It appears that Ministers had resolved to abandon their object before the armament was nearly completed, and yet they continued to arm as if the safety of the State had been in peril.” Mr. Pitt's conduct was so strongly blamed out of doors, that the Opposition in the Lords, by Lord Loughborough's advice, now ventured to divide; but they could only muster 19 to 98.\*

\* 29 Parl. Hist. 48, 96. Mr. Pitt's policy at this juncture the nation now regard with much more favour, after seeing the dangerous ascendancy which Russia was permitted to acquire, and the war into which we were forced in the middle of the following century

to save the Turkish empire from dismemberment and to preserve the independence of Europe. Mr. Fox and the Whigs seem to have been under a strange infatuation in favouring the conquests of Catherine.—*Note to 4th Edition, 1856.*

Lord Chancellor Thurlow, with the view of rescuing  
 May 16, Warren Hastings from his troubles, having con-  
 1791. tended very obstinately that an impeachment by  
 the House of Commons abates on a dissolution of parliament,  
 our Chief Justice not only gained a great victory in argu-  
 ment, but, being supported by the opinions of Lord Camden  
 and Lord Mansfield, actually carried the question by a  
 majority of 66 to 18 ; " so that the impeachment dragged its  
 slow length along, till he himself was actually on the  
 woolsack.

The Attorney-General of Lord North was now, under the  
 auspices of Mr. Fox, the warm supporter of all liberal mea-  
 sures, and was running a similar cycle to that which had  
 astonished mankind, when, after leaving Lord Bute and  
 Toryism, he had gained the loud applause of Lord Chatham  
 by standing up so boldly for " Wilkes and liberty."

He spoke strongly in favour of the Roman Catholic Relief  
 Bill,\* although it is now certain that, when he became the  
 keeper of the King's conscience, he poisoned the royal mind  
 by scruples about the coronation oath, and that he obstructed  
 the policy which he at this time supported.

To another measure, which fortunately was then actually  
 A.D. 1791— passed, he gave very effective aid—without which it  
 1792. must have been defeated—Mr. Fox's famous bill for  
 declaring the right of juries to decide the question of " libel  
 or no libel ?" Although Mr. Pitt, still a liberal and constitu-  
 tional Minister, was favourable to it, his wayward Chancellor  
 most furiously opposed it, —and, sad to relate ! he was  
 backed by the whole body of the Judges. In all the stages  
 of the bill during two sessions, Lord Loughborough gallantly  
 defended it by the side of the venerable Camden, to whose  
 consistent and pure love of liberty—ever to be held in  
 reverence—this constitutional triumph is mainly to be  
 ascribed. These were the most striking observations of the  
 occasional patriot :—

" The monstrous doctrine of the noble and learned Lord on the Wool-  
 sack, though meant to restrain the Press, is highly favourable to libellers.  
 In the struggle between the judge and the jury, the guilt or innocence  
 of the defendant is little thought of, and the jury heedlessly acquit him  
 to show their power. But they must be allowed to consider the inten-  
 tion of the publication ;—otherwise the free and fair discussion of poli-

\* 29 Parl. Hist. 523, 532, 543.

\* Ibid. 682.



tical subjects, and even texts of Scripture, may be construed into a libel. For my own part I have deemed it my duty to state the law as it bore on the facts, and to refer the combined consideration to the jury. Are the judges to say to the jury, *'Find the defendant guilty now, as he is proved to have published the writing complained of, and when he comes before us for sentence we will tell you whether or not it is a libel.'* It is the admitted maxim of law—*'ad quæstionem juris respondeant iudices,—ad quæstionem facti juratores;'* but when the law and the fact are blended, it is necessarily and undoubtedly the right of the jury to decide. You say that jurymen are incapable of comprehending the character of a publication charged to be criminal, and that this must be referred to enlightened judges. At the Old Bailey an alderman of London is a co-ordinate judge with the Chief Justice of England. Nay, indictments for libel may be tried at Quarter-Sessions, and fox-hunting squires, being the judges, are exclusively to decide upon the literary production set forth as a libel. One absurdity follows another; it is well known that special jurors whom you disqualify are generally magistrates,—and you would deprive them of all power when impanelled in the jury box,—while sitting on the bench you would make them decide the guilt and award the punishment."<sup>7</sup>

But immediately after the passing of the Libel Bill events happened which materially influenced the opinions and actions of Loughborough. Thurlow was dismissed from the office of Chancellor, and the Great Seal was put into the hands of Eyre, Ashurst, and Wilson as commissioners—obscure men, none of whom could aspire to the Woolsack. Sir Archibald Macdonald, the Attorney-General, having been promoted by mere family interest, looked no higher than the office of Chief Baron, then considered little better than a sinecure. Sir John Scott was Solicitor-General, but he could not be put over the head of his superior officer. The Chief Justice of the Common Pleas saw that if by any means he could be reconciled to the existing Administration, the golden prize might after all be his own.

The times were propitious for such an overture. Mr. Pitt's reputation as a statesman had been a little tarnished by the "Russian Armament;"—and the Whig Aristocracy, always powerful in talent and in family connection, had been recovering their popularity,—so that if they remained united they might be expected soon to be formidable rivals for office. Unhappily, they were divided upon the view to be taken of the French Revolution. The majority of the party, headed by Fox, regarded it as a great regeneration in France. and

likely to produce a salutary influence in other countries, by illustrating the beneficial consequences of a constitutional Monarchy, based upon the principles of popular representation and equal rights;—while a considerable section of them concurred with Mr. Burke in thinking it a conspiracy of spoliators and atheists, which, unless it were crushed, would first desolate the land where it broke out, and then throw into confusion the whole civilised world. Lord Loughborough, as we have seen,<sup>2</sup> had hitherto expressed nothing but approbation and hope when he discussed the proceedings of the National Assembly,—but he was now filled with apprehension and alarm; he declared in all companies, that in such a crisis—without regard to party considerations—the hands of Government should be strengthened, for the purpose of guarding the nation against the imminent peril with which it was threatened; and he openly applauded, in his place in Parliament, the proclamation issued in the King's name against seditious publications.

A negotiation was accordingly opened—one of the most important in our party annals, for upon the result of it depended, not merely the disposal of the Great Seal, but whether Fox or Pitt was to be Minister, and whether there was to be peace or war between this country and the new Republic of France. We have a very graphic account of it in the Diary of the Earl of Malmesbury, showing that it was chiefly conducted between Loughborough and Henry Dundas; that the Great Seal was the bait by which the wily Chief Justice, leading on the alarmist Whigs, was to be lured; that he himself was eager to join the Government as soon as possible, but that the other side were not willing to receive him till he could bring a large number of converts in his train; and that serious difficulties arose from a lingering regard for Mr. Fox, entertained by those who were inclined to follow him, and particularly by the Duke of Portland: “—

“*June 14.*—Dundas first wrote, and then spoke, to Lord Loughborough, expressing his wish that this temporary union would become a

<sup>2</sup> *Anti*, p. 107.

<sup>a</sup> While these negotiations were going on, Harry Dundas said to an old friend, “Wederburn would now give all he has in the world not to have framed the York Resolutions [while he was a patriot]: he knows that the King will never forgive him for that.” Lord Loughborough’s present Anti-

Jacobin zeal made him well received at court; but George III. could not forget his conduct on the Regency, which made him more obnoxious even than the York Resolutions, or his inflammatory speech at the Thatched House, when he was toasted as “Steward of the Chiltern Hundreds.”

permanent one. He held out four vacant places—the Chancellor (his own), the Secretary of State for Home Affairs, the President of the Council and Privy Seal—besides two or three Privy Councillors' places in the House of Commons, and the Lord Lieutenancy of Ireland. Lord Lough<sup>h</sup> took all this *ad referendum*, and was now come to talk it over with the Duke of Portland." "June 15.—The Duke of Portland related to me that Lord Lough<sup>h</sup> had the night before met Pitt at Dundas's; that he spoke with great openness and appearance of sincerity; that on Lord Lough's asking him whether the King knew it, Pitt said he did not come with the King's command to propose a coalition, but that he would be responsible it would please the King and the Queen, and that the only difficulty likely to arise was about Fox, and that difficulty entirely owing to Fox's conduct in Parliament during the last four months. That *every thing else* was entirely forgotten, and that he himself did not recollect, that in all their parliamentary altercations a single word had ever dropped from either of them to prevent their acting together without any fair reproach being made of a disavowal of principles, or an inconsistency of character," &c. "June 16.—Dinner at Lord Lough's with Fox. While Lord Lough. was engaged with his company, I talked with Fox, and afterwards carried him to Burlington House. He had not heard of the last meeting with Pitt, and did not make himself (as he generally does) practicable. He doubted Pitt's sincerity, and suspected he had no other view than to weaken their party, and strengthen his own; that to divide the Opposition was his great object; he doubted also the King's having consented accordingly to dismiss the Chancellor, and seemed to think it *possible* that a new Administration might be formed through him, from which Pitt was to be excluded." "June 17.—Lord Lough. called on me; he related very accurately all that passed between him, Pitt, and Dundas on the Thursday evening. Pitt, he said, wore every appearance of sincerity and frankness." "June 19.—Lord Lough. with me. He said he really thought it unreasonable to expect that Pitt should quit the Treasury;—that he could not, and *would not*, make such a proposal." "June 22.—Burke wished to see me, and I went to breakfast with him. He said there was no doing without Fox or with him; that he wished it to be declared by the heads of the great Whig party, that all systematic opposition was at an end; that for the better security, and in order to give a strong and convincing mark of it, Ld. Lough. should, by being made Chancellor, represent the party in the Cabinet, and be the link between them (the Whig party, he meant, and the Government), in order that, if on some future day the difficulties now arising from Fox's character and conduct should decrease, or the distresses of the country increase, a junction might be accomplished in a more easy and natural manner than even by the beginning the whole afresh." "July 5.—Lord Lough. related to me a long conversation he had a few days before with Fox, in which he said Fox appeared more harsh, impracticable, and opinative than he could have supposed him to be; that he saw no chance of any thing being done while Fox remained in his present temper of mind. He appeared hurt by Fox's

behaviour and manners towards him." "*July 27.*—The Duke of Portland told me this day that the Garter had been offered to him, through Lord Lough., which he had refused." "*Dec. 18.*—Lord Lough. called on me; he was greatly hurt at the Duke of Portland's inaction and Fox's violence. He urged the necessity of his talking to the Duke of Portland, and going to him in a body, to compel him to declare himself either decidedly for, or decidedly against, Fox." "*Dec. 20.*—At Lord Lough.'s particular request, Sir Gilbert Elliot went to the Duke of Portland, to know what was his opinion as to Lord Lough.'s taking the Seals. The Duke was decidedly against it, and said he would never consent to it."

Loughborough was now in a rage at finding himself thus baffled, and determined to act a very decisive part for his own advantage. Parliament had been suddenly called together by proclamation, and the first anti-Gallican measure was the Alien Bill,—to prevent the importation of republican principles. By this, contrary to the common law, the vexatious and useless system of passports was established for all aliens; the Secretary of State was authorised to expel all aliens from the kingdom; and regulations for the discovery of all aliens were imposed on the keepers of inns and lodging-houses, to be enforced by the punishment of transportation. The second reading of the bill being violently opposed by the Earl of Lauderdale and the Marquess of Lansdowne, it was gallantly defended by the aspirant Chancellor:—

"My Lords," said he, "my regard for the laws of the country and the obligations of religion, and the allegiance I owe to the Crown for the protection I receive from it, demand my support to the Government upon this occasion. The bill is indeed an extraordinary measure; but is not the situation in which we stand extraordinary? The period most resembling the present is the reign of Elizabeth, when the overgrown power of Philip agitated and alarmed every surrounding nation. Actuated not only by ambition, but by religious fanaticism, his greatest efforts were excited against this island. Money, forces, seditious writings, emissaries, were employed to excite plots in England, insurrections in Ireland, and an invasion from Scotland, against the Queen; but they were employed in vain,—owing to the wise regulations adopted by that Princess and her Parliament. At present a great and powerful people, actuated by a new fanaticism of infidelity, are endeavouring to propagate over Europe principles as inconsistent with all established government as they are with the happiness of mankind. However extravagant the new doctrines may be, they have undoubtedly made some proselytes in this country, and though in numbers they are as yet comparatively insignificant, they are stirring and active in their mischievous purposes, in hopes of domestic insurrection and confident of

foreign aid. During the temporary success of the combined Sovereigns their voice became more faint; but the moment that the tide of war turned in favour of France they resumed their courage; sedition broke out with increased violence, and clubs and societies for propagating their baleful opinions were formed all over the kingdom. Embassies were sent to France to congratulate the National Assembly on their victories, and even to promise the assistance of numbers here who would rise up in their cause, and who, in return, expected fraternal help to overturn the Constitution of England. In France anarchy and confusion triumph. There they had long vilified the Christian religion; but now, incredible as it may seem, public professions of Atheism have been made in full convention, and received with unbounded applause. It has been solemnly proclaimed that there is no God, and the basis of their new institutions is Atheism. The sanctity of the seventh day was very soon abolished by them, and they have at last destroyed the relation of parent and child. Their false prophet has taught that no honour is due to the parent, who in his turn may abandon the child. Robbery, murder, and licentiousness not only go unpunished, but are encouraged as meritorious acts. False testimony is a proof of patriotism; and so entirely are all ideas of property subverted, that it has lately been announced from authority that the farmer has only possession of the corn he has reaped as a trustee, but that the beneficial property is in the public, who have a right at their discretion to take it from him without recompense. It has been said that the fears of Ministers are affected, and that there is no foundation for the alarms which they have circulated. Ministers are tauntingly called upon for their proofs. Parliamentary scepticism may be allowed; but if any man out of the House were to hold such language, he would be laughed at. A proper sense of danger pervades all ranks of men, and all but the disaffected are ready to come forward in the common cause. Although the disaffected be few, they must not be despised. Your Lordships should recollect that the massacres of Paris in September were perpetrated by not more than 200 persons, in the midst of a city containing 600,000 inhabitants, with 30,000 men under arms. Let us not think lightly of what may be achieved by a small band, armed with daggers, under the cry of '*No King!*' We might already have been in a worse situation than when the metropolis was blazing and the mob were triumphant in 1780, had not Ministers wisely preserved the public tranquillity by calling out the militia, and making the military preparations that now resound in all quarters. The noble Earl has complained of loyal associations,—which are not legal, but meritorious, as tending to strengthen the hands of Government, and preserve civil and religious liberty. By the Constitution of this country, all are bound actively to assist in putting the law in force. I will tell the noble Earl what associations are illegal and punishable: associations to publish resolutions condemning the conduct of judges and juries, and vilifying the free institutions under which we and our fathers have lived and been happy. We ought to give Ministers all the powers they ask, and the

confidence which accompanied the decree of the free city of Rome in times of public danger : *Quod caveant Consules ne quid detrimenti capiat respublica !* I have no difficulty in saying that the present situation of this country would have justified a stronger measure than this bill for the regulation of aliens. I hope the people will now rush forward to assist the Executive Government in its paternal purposes,—burying all past differences and disputes in oblivion.”

This speech was received with loud cheers by the Ministerialists, and Loughborough flattered himself he had made such an impression upon his own friends, that the Duke of Portland, as the leader of the alarmist party, would immediately have risen and declared that they approved of all he had said,—in which case the transfer of the Great Seal would have taken place next morning. But the Duke, though repeatedly urged, remained profoundly silent : a suspicion existed that he and those more immediately under his influence still adhered to Fox, and the Chancellorship was too high a price for one solitary desertion. The continuation of Lord Malmesbury’s Diary brings the intrigue to its consummation much more strikingly than any laboured narrative :—

“ Dec. 22,—3 o’clock. Lords Loughborough and Porchester, Burke, Sir G. Elliot, Anstruther, Dr. Lawrence, and Elliot of Wells, met at my house. Lord Loughborough said he had been with the Duke of Portland—that he had had a very long and explicit interview with him—that the Duke had entered fairly into the subject—that he had declared himself as averse as he himself was to Fox’s principles and motions—but that he was of opinion it was not yet time to break with him,—and that it would be better to try for every possible means of reconciliation. He was convinced that Fox had lost himself by what Baldwin had told him, and that he himself was a partaker of his unpopularity,—yet that still he wished to keep on terms with him. Lord Loughborough then stated to us how such a conduct, inasmuch as we were considered as belonging to the Portland party, involved us in all the unpopularity and disgrace attending Fox’s principles ;—that therefore it was become necessary to decide what was to be done, and how the Duke of Portland could be obliged to declare his sentiments to be contrary to those of Fox. Burke, with his usual eloquence, talked for an hour. We sat till it was time to go to the House, without coming to any other conclusion than that we would meet again in greater numbers, and the next day was fixed for that purpose.—At the House of Lords I saw Lord Carlisle ; he was for Lord Loughborough’s accepting the Seals as a pledge for the good intentions of the party.”—“ Dec. 26. The Alien Bill passed, opposed by Lord Guilford, and Lords Lansdowne and Lauderdale. These two made violent and mischievous speeches. Lord Loughborough answered them in one of the finest speeches possible. But the Duke of

Portland, to the great concern and grief of his friends, did not say a word. I urged him repeatedly to get up, but he said he really could not, he felt it impossible; that Lord Loughborough had said all that could be said, and that it was impossible to speak after so fine a speech. I pressed him to say those very words and nothing more, but without effect.”—“*Dec. 27.* I received a letter very early from Lord Loughborough, lamenting and complaining of the Duke of Portland’s silence,—lamenting it from public reasons,—complaining of it from the injury it did his numerous body of friends who wish to hold high the honour of his name :—

“‘*MY DEAR LORD,*—Though I am sensible that I spoke with some effect to-night, I am not young enough to feel on that account any satisfaction that can make up for the Duke of Portland’s silence. The few words in which he expressed to me his approbation, pronounced upon his legs, would have had more effect on the House and on the public than ten speeches. The House had waited for his declaration; the course of the debate called for it—particularly in the latter part between Lord Lansdowne and me, and still he left it in doubt which of us spoke his sentiments,—knowing, too, that Lord Lansdowne’s party make no scruple to use his name against his intentions, and will not fail to quote his silence against my speech; and this at a moment when the connection with Lord Lansdowne was so plainly marked. The Duke of Portland hesitates whether he shall withdraw his countenance from a party formed of Lord Lansdowne, Fox, and Grey, under the auspices of *Chauvvelin*. What a position that is for his character, and those numerous friends who, not only from personal attachment, but as a great public point for the country, wish to hold high the honour of his name! I do not think I shall compose myself to-morrow into a fit temper to go to Burlington House, and present my remonstrance to him; but I dare to say Lord Lauderdale will not fail to be there. I wish Sir Gilbert Elliot and you would consider what is to be done, for I cannot devise any measure to retrieve the mischief of this day to the Duke of Portland. The House of Commons will not make up for it. The only thing that could be effectual would be a positive declaration to the party that has left him—that he holds them as entirely detached, and not less in opposition to him than to Government. But that I despair of. I could not help writing this to you, tired as I am, but yet more vexed than tired.’

“*Dec. 27.* At 3 o’clock I went to Lord Loughborough’s in Bedford Square. He had lying on his table when I came in (he returned at the same moment from a ride) a letter from the Duke of Portland. He read it, and on giving it to me to read, said, ‘*This is worse and worse.*’ The letter was to explain the motives of his silence [out of regard to Fox]. Lord Loughborough was violent; he said he was betrayed; and it was with some difficulty I prevented him from going immediately to Burlington House.”—“*January 1, 1793.* Lord Lough-  
borough with me early; he, eager for a further *éclaircisse-*

A.D. 1793.

ment with the Duke, and for laying the whole before the public; I still for waiting, if possible, to the end of the recess. Lord Loughborough from me went to see the Prince of Wales in the evening.”—“*January 4.* Lord Loughborough, at Lady Payne’s, showed me a letter from Dundas, pressing him to decide as to taking the Great Seal, saying that he and Pitt had abstained renewing the subject for some time past, under the plea that there were still hopes of having the Duke of Portland; that this was now considered to be at an end. Lord Loughborough answered that he still had some hopes that a letter he intended to write would produce some effect; and it was of such importance to be joined by so respectable a character as the Duke of Portland, he still wished to wait.”—“*January 14.* I wrote a letter to the Duke of Portland, explicit of my opinions and intentions. Dined at Batt’s; Lord Loughborough there. No answer from the Duke. He had seen Dundas, and stated to him fairly that the consequences of his taking the Great Seal would be, that forty or fifty members *only* would join the Government. That as many more, now with the Government, would probably return to Opposition; that it was for Ministers to consider whether it was for their interest to take him on these conditions.”—“*January 18.* I saw Lord Bute in the morning; he a little warped. Strongly against Lord Loughborough taking the Seals; said it would make all who followed him unpopular to a certain degree. I dined with Lord Loughborough with only Anstruther. He declared his determination of taking the Seals; only doubted as to the time. I advised him to see the Duke of Portland first; and, above all, to fix Windham to engage him to approve it on his legs in the House of Commons.”—“*January 20.* Called on Lord Loughborough. He returned with me, and went from my house to meet Pitt by appointment. He stayed with him about an hour and a half, and then came back to me. He told me war was a *decided measure*; that Pitt saw it was inevitable, and that the sooner it was begun the better—that we might possess ourselves of the French Islands;<sup>b</sup> that the nation now was disposed for war, which might not be the case six weeks hence.”—“*January 21.* News of the sentence of death being pronounced on the King of France. Called at Burlington House twice. Duke of Portland not at home.”—“*January 22.* Wrote a letter to Pitt at Lord Loughborough’s. Dined with Pitt and Dundas at Wimbledon. I was two hours with the Duke of Portland. He lamented Fox’s conduct, and particularly blamed it, if it were true (which he did not think) that he had given Sheridan authority to speak for him at the meeting held at the ‘Crown and Anchor’ on the liberty of the press.”—“*January 23.* Lord Loughborough called upon me on his return from Westminster Hall. He said Pitt had again repeated to him what he had said before about me. I repeated to him what had passed at Burlington House. We concluded it was a favourable moment for him to see the Duke; he therefore read me a letter, stating his intention of taking the Seals;

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\* This discloses the erroneous principle on which the war was afterwards conducted.



and his reasons, which he rested on the duty of every man now doing his utmost to serve his country, and the cause in which it was going to engage. This letter he asked me to carry; but, on reflection, it was determined that it had better go through Baldwin, of whose understanding the Duke of Portland had a high opinion, and who he thought was attached to him. Baldwin, therefore, was to go to Burlington House in the evening."

In a few days Lord Loughborough was enabled to announce to Mr. Pitt the full adhesion of the Duke of Portland, and thereupon the bargain was closed.

In the *Rosslyn MSS.* I have found a vast number of letters, written during this negotiation to Lord Loughborough, by Mr. Burke, the Earl of Carlisle, Mr. Ralph Payne (afterwards Lord Lavington), and Mr. Pitt, which present a very lively picture of the state of parties during this crisis, and which will be of much use to the historian of the reign of George III.<sup>c</sup>

Lord Loughborough had met with such disappointments when he had thought the Great Seal within his grasp, that he is said to have been very nervous on the day fixed for his receiving it,—feeling a sort of superstitious dread that a spell had been cast upon him, and that by some mysterious decree it had been ordained, that, however often or closely he might approach the object of his pursuit, he should never reach it.

However, no political embarrassment—no visitation from Heaven—now frustrated his hopes,—and on the 28th day of January, 1793, at Buckingham Palace, the Great Seal was actually delivered into his hand by George III.<sup>d</sup> Carrying it home in his coach, he exultingly showed it to Lady Loughborough, though he afterwards declared he was still a little afraid that he might awake and find that he had once more been deluded by a pleasing dream. He never acknowledged to

<sup>c</sup> Some of the most interesting of them will be found in the Appendix to Ch. CLXXV. —3rd Edition.

<sup>d</sup> Jan. 29, 1793. —The Lords Commissioners for the custody of the Great Seal of Great Britain, having delivered the said Great Seal to the King at the Queen's House on Monday, the 28th day of January, 1793, his Majesty the same day delivered it to Alexander, Lord Loughborough, Chief Justice of the Court of Common Pleas, with the title of Lord High Chancellor of Great Britain, who was then sworn into the said office

before his Majesty in Council; and the next morning came into the Court of Chancery, in Westminster Hall, attended by several Peers, &c., and in open Court took the oaths of allegiance and supremacy, and the oath of Chancellor of Great Britain, the same being administered by the Deputy Clerk of the Crown, the Master of the Rolls (covered) holding the book; which being done, Mr. Attorney-General moved that it might be recorded by the Clerk of the Crown in Chancery, which the Court ordered accordingly. —*Minute Book*, No 2, fol. 42.

others the farther truth that a few days' possession showed to him the utter worthlessness of the object for which he had made such exertions and such sacrifices.

## CHAPTER CLXXII.

CONTINUATION OF THE LIFE OF LORD LOUGHBOROUGH TILL THE  
CONCLUSION OF HASTINGS'S TRIAL.

THE new Chancellor was most cruelly assailed by the Opposition press as a renegade. The quotation was often repeated—

A.D. 1793.

"Thou hast it now ;  
 . . . . . and I fear  
 Thou play'd'st most foully for't."

His own saying was revived with respect to curing "the bite of the tarantula of Opposition by the music of the Court."<sup>e</sup> In the midst of much coarse vituperation, which he must have despised, he was probably more stung by the following playful *jeu d'esprit* of Matthias, which was repeated and laughed at in Burlington House, as well as in all other fashionable societies :—

"The Serenata of ACIS AND GALATEA has been performed in Downing Street, to a private company. The part of *Acis* by Mr. Pitt, *Polypheme* by Lord Thurlow, and *Galatea* by Lord Loughborough. The barytone of Lord Thurlow was quite *Polyphemeish*, and fully sustained ; but it was impossible to do justice sufficiently to Lord Loughborough's *diminuendo*, when he *died away in the arms of Acis*."

The object of these pleasantries, however, by no means incurred now the same obloquy as when in 1771 he left his party, without a companion, to be made Solicitor-General. If he counterfeited what he did not feel,—the dread of revolution professed by the "alarmist Whigs" was sincere ; and although they at first discouraged the notion of his taking office, the Duke of Portland, Lord Spencer, and Mr. Windham soon followed his example. We may fairly gather the sentiments of that party from a letter of Sir Gilbert Elliot to Lord

<sup>e</sup> *Antè* Vol. VII., p. 401.

Malmesbury, written from Minto, the very day before the transfer of the Great Seal actually took place. After expressing his own determination not to accept office, he says,—

“ With regard to Lord Loughborough, I think the question stands on different grounds. His acceptance of the Seals I believe sincerely to be eminently necessary for the public service. His conduct has been highly honourable, and every thing like personal claim or even party claim on him by the Duke of Portland is certainly at least cancelled, if not converted into a direct *provocation*, by what has passed since the commencement of this session. But the public good, in my opinion, *requires* his services; and for that reason they are *due* from him. I shall certainly not only approve but applaud his acceptance of the Seals. It is for every man to consider whether the public has the same claim on him. I cannot feel that my services *in office* are of the smallest moment to the country; but the circumstances of the country may become such as to require all our aid, in every way in which it is called for.”

Some who had narrowly watched the career of the “wary Wedderburn” declared that he would have supported a revolutionary movement, and held the Great Seal under the directors of the “Anglican Republic,” if this had appeared the better course for gratifying his ambition; but in the Anti-Jacobin frenzy now prevailing he was very generally applauded for magnanimously leaving his party when it had become infected with the bad principles which he had so boldly denounced, and for the dexterity with which he had carried so many partisans along with him to rally round our time-honoured institutions. Thus was he congratulated by Burke :—

“ MY DEAR LORD,

“ Since I saw you last, the catastrophe of the tragedy of France has been completed.<sup>f</sup> It was the necessary result of all the preceding parts of that monstrous drama.

“ Though I looked for something of that kind as inevitable from the day when the Rights of Man were declared, yet when the fatal and final event itself arrived, I was as much levelled and thrown to the ground, in the general consternation, as if it were a thing I had never dreamed of.

“ I felt and I feel deeply : but I have recovered myself. I have now only to think of the part which you, and those who have got enough of spirit, energy, and abilities to come forward in the service of your country, are obliged to take in this awful crisis of the world.

"I hear that your Lordship is to take the Great Seal next Tuesday. I think we are all much obliged to his Majesty for this arrangement. The King has acted wisely in his choice. You have done your duty in your acceptance. I should have thought you criminal, in your circumstances, if you had declined to do a service to the public, which you alone can do.

"The time requires exertions of uncommon vigour and compass. It is therefore proper to add all possible strength to an Administration which has for its object effectually to defend the Constitution of this kingdom, and the liberties of Europe, against French principles and French power. This never can be done by those who have declared their concurrence with the one, and their good wishes in favour of the other. There is a confraternity between the two divisions of the French faction on the other side of the water and on this. They are both guilty, and equally guilty, of the late acts which have wounded to the quick all the moral feelings of mankind. If you had no other reason for going into the great trust you have accepted than as a mode of expressing your perfect detestation of the English branch of that infernal faction, and your total alienation from any connection whatsoever with any of its leaders, I should think that motive alone would be sufficient to recommend the step you have taken to every honest mind. I shall not think that the honour of your high situation is complete until I find you abundantly censured and libelled by them.

"My dear Lord, I regret that you do not carry in along with you those whom I shall ever love, value, and lament. But their error is not your fault. I prognosticate good things to the morals, virtue, and religion of the world from this appointment. Let me not find myself mistaken. You have undertaken a task of great public responsibility. I know the purity of your motives—but the public will judge of them by your future conduct, and the effect of your services. I am sure you have my most sincere good wishes.

"I am, with a very affectionate attachment,

"My dear Lord,

"Your Lordship's faithful and affectionate humble servant,

"EDM. BURKE.

"Duke Street, Jan. 27, 1793." §

As soon as the intelligence reached Switzerland, it called forth the following effusion from the Historian of the Decline and Fall of the Roman Empire,—now become, from dread of *Sans Culottes*, a convert to Church establishments, and a defender of the Inquisition:—

"MY LORD,

"I do not merely congratulate your Lordship's promotion to the first

civil office in the kingdom—an office which your abilities have long deserved. My satisfaction does not arise from an assurance of the wisdom and vigour which Administration will derive from the support of so respectable an ally. But as a friend to government in general, I most sincerely rejoice that you are now armed in the common cause against the most dangerous fanatics that have ever invaded the peace of Europe—against the new Barbarians who labour to confound the order, and happiness of society, and who, in the opinion of thinking men, are not less the enemies of subjects than of kings. The hopes of the wise and good are now fixed on the success of England, and I am persuaded that my personal attachment to your Lordship will be amply gratified by the important share which your counsels will assume in that success.

“I could wish that some of your former associates possessed sufficient strength of mind to extricate themselves from the toils of prejudice and party: but I grieve that a man whom it is impossible for me not to love and admire should refuse to obey the voice of his country; and I begin to fear that the powerful genius of Mr. Fox, instead of being useful, will be adverse, to the public service. At this momentous crisis we should enlist our whole force of virtue, ability, and spirit,—and, without any view to his private advantage, I could wish that our active friend Lord Sheffield might be properly stationed in some part of the line.

“Mr. Necker, at whose house I am now residing, on a visit of some days, wishes me to express the sentiments of esteem and consideration which he entertains for your Lordship’s character. As a friend of the interest of mankind he is warmly attached to the welfare of Great Britain, which he has long revered as the first, and perhaps as the last, asylum of genuine liberty. His late eloquent work, ‘*Du Pouvoir Exécutif*,’ which your Lordship has assuredly read, is a valuable testimony of his esteem for our Constitution; and the testimony of a sagacious and impartial stranger may have taught some of our countrymen to value the political blessings which they had been tempted to despise.

“I cherish a lively hope of being in England, and of paying my respects to your Lordship, before the end of the summer. But the events of this year are so uncertain, and the sea and land are encompassed with so many difficulties and dangers, that I am doubtful whether it will be practicable for me to execute my purpose.

“I am, my Lord, most respectfully, and (your Lordship will permit me to add) most affectionately,

“Your most obedient and faithful humble servant,

“E. GIBBON.

“Rolle, Feb. 23rd, 1793.”<sup>h</sup>

<sup>h</sup> Ross. MSS. In the year 1798, when Lord Sheffield was publishing Gibbon’s Miscellaneous Works, he asked Lord Loughborough’s permission to include this letter in

the collection, but was refused. He then made a second application, in a letter which lies before me, and thus begins: ‘My dear Lord,—Pelham and Serjeant were with me

“On Monday, the 4th of February, the Chancellor came into the Court of Common Pleas to take the oaths on his new appointment, and sat for a short time as Chief Justice. Before he retired, his Lordship took leave of the Bench and the Bar in a very elegant address, expressive of his gratitude for the uniform attention and respect which he had received during the time he had presided there.”<sup>1</sup>

We are now to view him as the chief Equity Judge, and D. 1793—  
1801. presiding over the general administration of justice in this country. As far as *representation* went, no one ever acted the part with more applause. In the first place, his style of living was most splendid. Ever indifferent about money, instead of showing mean contrivances to save a shilling he spent the whole of his official income in official splendour. Though himself very temperate, his banquets were princely; he entertained an immense retinue of servants, and, not dreaming that his successor would walk through the mud to Westminster, sending the Great Seal thither in a hackney coach, he never stirred abroad without his two splendid carriages, exactly alike, drawn by the most beautiful horses, —one for himself, and another for his attendants. Though of low stature and slender frame, his features were well chiselled, his countenance was marked by strong lines of intelligence, his eye was piercing, his appearance was dignified, and his manners were noble. To the Bar he was impartially courteous, never favouring, or being afraid of, any man who practised before him. While sitting on the bench, he devoted his whole attention to the arguments addressed to him, unless when it was necessary to give a hint of “wandering” or “repetition;”—and from his quick perception of facts, and capacity of being made to understand nice legal questions with which he was little familiar, he was praised by Chancery practitioners rather beyond his merits as an Equity Judge. They had no jealousy of him as a common lawyer, for he had been bred in their school, and he certainly knew as much of equity as of law. Unfortunately, he would not now submit to the labour and drudgery necessary for acquiring permanent

when I received your Lordship's answer on the subject of publishing Gibbon's letter of congratulation. They wondered, as well as myself, that you should object. There is nothing fulsome, nor more said than perfectly natural and proper; but as the letter is happily expressed in regard to the times of Mr.

Necker, it is a pity it should be lost; and by erasing your name, and the name of your office, your objections perhaps may be removed.” Lord Loughborough was very sensitive upon the subject of his coalition with Mr. Pitt, and he remained inflexible.

<sup>1</sup> 2 Hen. Black. 132.

reputation as a magistrate. When out of court, instead of dedicating his time to the consideration of the cases pending before him, or in reviving and extending his juridical knowledge, he was absorbed in politics, or he mixed in fashionable society, or he frequented the theatre. The *beau idéal* of a perfect Chancellor does not present to us a mere slave to judicial duties, neglecting all that is elegant and liberal; but such a man, regularly trained in his profession, and possessing a good understanding and upright intentions, would distribute justice more satisfactorily to the suitors, than another who, without these qualifications, may aim at uniting in his own person the reputation of a Bacon, a Somers, and a Shaftesbury. However, Lord Loughborough's dazzling accomplishments, joined with his characteristic discretion, covered his defects; and, although he lived in very factious times, I do not find incompetence for his office, or remissness in the discharge of it, ever gravely imputed to him. According to Butler, who had often heard him, and was well qualified to compare him with his predecessors, "His judicial oratory was exquisite. The greatest detractors from his merit acknowledged the perspicuity, the luminous order, and chaste elegance of his arguments. Like Lord Camden, he frequently and successfully introduced law phrases into them." Yet the panegyrist is obliged to acknowledge that he betrayed "a want of real taste for legal learning." The lenient view taken of him while in office by contemporary lawyers was partly to be accounted for by their pride in having at their head a gentleman and a scholar—a man "wholly above any sordid feelings of avarice or parsimony, and only valuing his high station for the power which it conferred, and the dignity with which it was compassed round about."<sup>k</sup> But when we come calmly to review his judgments, we cannot much commend them, and we are astonished to find with what a small modicum of juridical acquirement a man may reputably fill the most exalted judicial office. They are recorded in the 2nd, 3rd, 4rd, and 5th volumes of Vesey, junior.<sup>m</sup> Going through them

<sup>k</sup> Lord Brougham's Sketches, 1. 85.

<sup>m</sup> He was unlucky in his reporter. I knew this gentleman well. When near eighty, he was still called "VESSEY, junior," to distinguish him from his father, "Vessey, senior," the historiographer of Lord Hardwicke. He was a very good-natured fellow, and very honest and painstaking, but very dull. He wrote his

notes in snort hand, which never will produce good reporting. He has succeeded much better with Sir William Grant, whose judgments, when delivered, were perfect in thought and expression; but he was quite unequal to the task of abridging, arranging, and giving the spirit of any discourse which he heard.

with a view to select some of importance and interest, I am a good deal disappointed,—although my expectations were not very high. Considering that Lord Loughborough presided in the Court of Chancery above eight years, it is wonderful how little he added to our equitable code. By far the best judgments given in the Court of Chancery during this period were by Pepper Arden, Master of the Rolls, afterwards Lord Alvanley.

Yet a few cases decided by our Chancellor may be stated with the hope of instructing or amusing the reader. In *Graham v. Johnstone*, in which he held that the personal property of an intestate, wheresoever situate, must be distributed according to the law of the country in which he was domiciled, his acquaintance with the civil law enabled him to deliver an able dissertation on the law of domicile. The suit arose out of a disputed claim to certain personal property in Scotland which had belonged to the last Marquess of Annandale, who had long been a lunatic:—

*Lord Loughborough*.—"First I must look to see what was his domicile when he became lunatic, for it could not be changed afterwards by any change of residence. Though of Scottish origin, according to the will of his maternal grandfather his expectations of fortune, settlement, and establishment were in England, and here he chiefly passed his days. He visited Scotland, but without any purpose of remaining there. Having once gained a domicile in England, there it must remain till it changed by the execution of a purpose permanently to abide elsewhere. The actual place where a man is, *primâ facie*, is his domicile; but his home may be shown to be elsewhere. You encounter the presumption by showing that the residence is involuntary or transitory. In this case every thing tends to the conclusion, that the place where Lord Annandale was found was the place in which he had resolved to spend the remainder of his life.—If the point were new and open, it appeared to me to be susceptible of a great deal of argument, whether in the case of a person dying intestate, having personal property in different places and subject to different laws, the law of each place should not obtain in the distribution of the property situate there? Many foreign writers have held the affirmative, and there was a time when the Courts of Scotland concurred in that opinion; but now I am obliged to consider that personal property has no locality except the domicile of the owner."<sup>a</sup>

In *Fells v. Read*,<sup>o</sup> Lord Loughborough confirmed the doctrine, that where a man wrongfully withholds the possession

<sup>a</sup> 3 Vesey, jun. 200. See *Somerville v. Somerville*, 5 Vesey, jun., 749, in which the law upon this most important subject was finally

settled by the admirable judgment of Sir Pepper Arden.

<sup>o</sup> 3 Vesey, 70.



of a chattel, the value of which cannot be estimated and compensated by payment of damages, equity will compel him to deliver it up specifically. A club had subsisted from very ancient times, called "The Past Overseers of St. Margaret's, Westminster," consisting of persons who had served the office of overseer of the poor of that parish. They had a silver tobacco-box, inclosed in two silver cases, all which were adorned with engravings of public transactions and heads of distinguished persons. The box and the cases were always kept by the senior overseer for the time being, who, on coming into office, received them with a charge to produce them at all meetings of the club, and to deliver them up on going out of office to his successor. The defendant, who had so received them, refused to deliver them up, unless certain illegal items in his accounts were allowed by the vestry:—

*Lord Loughborough.*—"I always regret when I see litigation and expense occasioned by peevishness and obstinacy. But this cause being here, I must decide it upon established principles. A pecuniary estimate cannot be put upon this box with its cases, and therefore the remedy of the rightful owners shall not be confined to an action of trover or detinue. The 'Pusey horn' and the 'patera' of the Duke of Somerset were decreed to be delivered up; a jury might not have given twopence beyond their weight as bullion. We cannot refer the owners of such curiosities, to which they are affectionately attached, and which might fetch a great price at an antiquarian's sale, to the estimate of farmers and mechanics. In some such cases, no damages would be a compensation, and the jurisprudence of the country would be strangely defective if the spoliator might, by sacrificing a sum of money, set the rightful owner at defiance. This case calls peculiarly for the interposition of a Court of Equity, as the defendant received the box and cases on condition that he would return them at the end of the year, and he is a trustee for the club."<sup>P</sup>

Lord Loughborough showed a mind well imbued with juridical principle in deciding the case of *Comte de Perigord v. Boulanger*. The famous Prince Talleyrand, when the profligate Bishop of Autun, borrowed 70,000 livres from the defendant, a usurer in France. For this sum, he and the plaintiff, as his surety, became bound by an obligation, which, according to the French law, did not subject them to arrest either on mesne process or in execution. At the breaking out of the French revolution, both the plaintiff and the defendant emigrated to this country; afterwards, the plaintiff, being about to sail on an expedition to the coast of Brittany, was

<sup>P</sup> See the authorities collected, 3 Vesey, jun. 73 n.

arrested by the defendant for this debt, and, to procure his release, paid him 100*l.* in cash, gave him two bills of exchange for 100*l.* each, at two and four months, and executed a bond for the remainder of the debt, payable at the end of six months after a peace should be concluded between England and France—with interest in the mean time. The plaintiff paid the first bill of exchange, but, refusing to make any further payments, and being again arrested, filed this bill for an injunction, and to set aside the securities :

*Lord Loughborough.*—"I think the proceeding on the part of the defendant has been extremely oppressive and immoral. I am not prepared to say how far the Court will finally grant redress, but I will not allow the defendant to avail himself of an advantage got by duress, which is the sole cause of the new engagement. If it stood upon the original obligation, it would be contrary to all the rules which guide the Courts of one country in deciding on contracts made in another, to give a greater effect to this contract than it would have by the law of the country where it was made. It is against all conscience, that these parties being driven to our shores by a common calamity, the one should be permitted to take advantage of that calamity and to immure the other in a gaol." *The injunction was continued.*

The only case of a political aspect which came before Lord Loughborough was *Wallis and Troward v. Duke of Portland*.<sup>\*</sup> George Tierney, in 1789, before the split in the Whig party, had been started as a candidate for Colchester, under the auspices of the Duke of Portland, and being beaten at the poll, presented a petition complaining of a false return. The bill alleged that Mr. Tierney employed the plaintiffs on behalf of the Duke to conduct the petition before the election committee; that they did so, disbursing between three and four thousand pounds; that neither Mr. Tierney nor the Duke would pay them, and that they had no legal evidence against the Duke; they therefore prayed a discovery against him, and particularly that he should answer, whether he had not authorised Mr. Tierney to retain them? There was a demurrer to the bill, on the ground that the transaction relied upon was illegal.

*Lord Loughborough.*—"The case disclosed is of this nature: an undertaking, supposed to have been entered into between the plaintiffs and the defendant, stipulated that he would defray the expense of a petition against the return of a member of parliament. This is an agreement between two parties to the oppression of a third;—in short, it is 'main-

tenance.' 'Maintenance' is not confined to suits at law, and although there are statutes inflicting penalties for particular sorts of 'maintenance,' it is laid down as a fundamental rule that 'maintenance' is *malum in se*—not merely *malum prohibitum*. Strangers are forbidden to aid the prosecution of suits in which they have no interest—that justice may be equally administered to all. To speak to a counsel or an attorney for the purpose of encouraging a suit in which the speaker has no interest, has been adjudged 'maintenance.' I do not go into the argument which was very properly urged in support of the demurrer upon considerations of *public policy*, as I think that the discovery would be of a *specific offence*, well known to the law. I am therefore of opinion, that a Court of Equity ought not to permit the suit to proceed farther."

Upon appeal to the House of Lords, the order allowing the demurrer was affirmed, without hearing the counsel for the respondent.\*

The case with which Lord Loughborough seems to have taken most pains, as it attracted a great deal of public attention, was *Myddleton v. Lord Kenyon*.† The plaintiff, the representative of the ancient family of the Myddletons of Chirk Castle, in Wales, having been very extravagant in his youth—when turned of sixty joined in an arrangement with his son, whereby certain large estates of which he was seized in fee, and others of which he was tenant for life, with remainder to his son in tail, were conveyed to trustees, who were to pay his debts, to allow him such a sum as they should think fit for his support,—and at his death to make over the estates to his son. At this time, having been twice married, he had no thoughts of again entering the state of matrimony—but, caught by the charms of a pretty young girl, he married her, much against his son's wishes, and having no means of settling a jointure on her, or providing for the issue expected from this marriage, he filed a bill to have the trust deeds set aside—merely on general charges of fraud and misrepresentation. His counsel chiefly relied upon the improvidence of the father in executing such a settlement, and the equity that he should be relieved from it, after his third marriage. "I admit," said one of them (Mr. Hargrave), "that there is entwisted into the transaction which the plaintiff seeks to invalidate an aggregate of the most unimpeachable integrity; the first of the trustees, Lord Kenyon, is of so peculiar a description, that to suppose him to be privy to a fraud would be to suppose justice itself

\* 3 Vesey, jun. 503 n.

† The judgment extends over fifteen pages of Vesey, jun. vol. ii. 401—416.

transmuted—would be to suppose what we must all presume, and I heartily believe, to be a moral impossibility.”

*Lord Loughborough.*—“I lay no stress upon the character of the trustees. It is very fit that, in a court of justice, the name of the party should not avail him. But if, instead of names towards which I bear a personal respect, the names of the defendants had been totally unknown to me, or, to put a stronger case, supposing them to be men of whom, from former prejudices, I had entertained a bad opinion, my decree would unhesitatingly have been in their favour. The plaintiff, at an advanced age, repenting too late his past extravagance, found himself possessed of large estates, but without either money or credit. He had long supplied his necessities by granting annuities upon the very worst terms—much worse than those of the most unfortunate dissipated young heir who has fallen into the worst nest of hornets with which this town is infested. The settlement which was made to free him from his difficulties might, in some respects, have been more considerably framed; but, being free from fraud, I have no control over it. The act of the son, in joining to convey the entailed estates to the trustees, is consideration enough flowing from him to support it. Each of the parties is *rei sue arbiter et moderator*. This Court cannot interfere in this case without making itself *arbiter et moderator* of the private affairs of all the families of England. There being no extrinsic fraud charged, none appears on the face of the deeds. Mr. Myddleton complains bitterly of being left dependent on his trustees; but it would have been folly in the extreme for him to have taken to himself a certain income. I ask if there ever was an instance in which, under similar circumstances, a man in this state of debauch, by granting annuities, (for it is like dram-drinking—it irritates, and inflames, and deadens,) was ever left with a certain income? The purpose would be totally defeated. The old habit would return. If there be a secure fund to be pledged, the facility of raising money offers a temptation known to be irresistible. Then it is objected that no provision is made for a third marriage. I suppose that a third marriage was not in the contemplation of any of the parties. It has taken place. I have no right to blame it, but it was not provided for; and I can no more relieve here than in the not uncommon case of a first marriage early in life, and a settlement without any provision for the jointure of a second wife. An unfortunate situation arises if the first wife dies young; but it would be a strange argument that the settlement should be set aside to the prejudice of those entitled under it, because an event has happened which had not been contemplated by the parties. The last objection is, that the remainder is given to the son. It is sufficient for me that I am satisfied Mr. Myddleton understood what he was about; that he was not deceived as to the extent of this settlement. No person cheated him. They were his own attorneys, friends, and trustees who had the preparation of every thing; and when I find a settlement so made, am I to say—he has been over-liberal to his son? Be it so! *Sic voluit*. But I do not know that he could have done a

wiser thing than, after he had put his son on a short allowance for a considerable time, in order to clear the estate, thinking right to give it to him entirely. We are told that the settlement must either have proceeded from misapprehension or misrepresentation ; but I cannot presume either. The plaintiff knew that he was tenant in fee-simple of an estate of 7000*l.* a-year, and no man would have dared to tell him that he could not sell that estate to pay his debts without the consent of his son. But it is true that his son's consent was necessary for the purposes he had in view—purposes of the heart, not of sordid selfishness—purposes that it would be the pride of an honourable man at his time of life to have accomplished—so that he might say, ‘I have so arranged that, all my debts being paid, my son will be owner of a great estate, maintaining hospitality in his magnificent castle, and enjoying the station and the respect which have long distinguished our ancient line.’ Such feelings, according to the evidence, must have actuated his bosom. An eye-witness gives us a touching representation of the scene, when the son, with duty and affection, threw himself into his father's arms, and desired to be guided in every thing by the law advisers whom his father had appointed, and with whom he himself was unacquainted—solicitous only for the honour of the family and his father's happiness. Trustees were named on the part of the father. In this story every thing is reversed. There have been cases where an extravagant son, for a temporary accommodation, has been imposed upon by the father in resettling the estate. Here we have extravagant old age and frugal youth. The father complains that, in making provision for the payment of his own debts, he has been overreached by the son. But he suggested every thing, he conducted every thing, and he named trustees whose very names are allowed to be a guarantee against fraud. Finally, Mr. Hargrave emphatically pressed that I should suspend my judgment, as this matter might be privately arranged better than in a court of justice, and that I should interpose by way of accommodation. Sitting here, I must decide when the case is ripe for judgment, and I cannot recommend where I have no power to decree. It must be the wish of every honourable mind that harmony may be restored between the father and the son ; and it is the particular advantage of such a trust as this, that it vests in the trustees a species of jurisdiction upon nice matters of feeling which the public interest will not permit to reside in a judge. Meanwhile the bill must be dismissed with costs.”

Lord Loughborough had the glory of putting an end to the litigation which had been going on half a century respecting the foundation of Downing College, Cambridge,—deciding that the heir at law had no right to the rents and profits of the estates before the devise was carried into effect—and disposing of all the other points in this suit. But he prudently directed that his decree should be confirmed by an Act of Parliament.<sup>u</sup>

<sup>u</sup> 3 Vesey, jun. 714 ; 5 Vesey, jun. 300.

In another academical case, he showed that a man educated at a Northern university, though perhaps deficient in the niceties of metre, may be as familiarly acquainted with the beauties of the Classics as those who have studied them on the banks of the Isis or the Cam. Mr. Francis Wrangham, afterwards Archdeacon of Chester, and highly distinguished in literature, being a scholar of Trinity Hall, Cambridge, was candidate for a vacant fellowship, contending that he had a *right* to be appointed, as he was the only "scholar" who was a candidate; that by the statutes, upon such a vacancy, it was provided "*quod in loco socii Collegii subrogetur scholaris idoneus moribus et ingenio*," and that no objection could be made to his *morals* or his *talents*. The Master and Fellows, however, expressing a dislike to his *manners*, passed him over, and elected the Reverend John Vickers, A.M., of Queen's College. Mr. Wrangham presented a petition to the Lord Chancellor as visitor of Trinity Hall, on failure of the heirs of the founder, praying that this election should be set aside—and the great question debated was, whether he was to be considered "*scholaris idoneus moribus et ingenio*," which turned chiefly upon the true translation here of the word "*moribus*," whether it means "*morals*" or "*manners*."

The counsel for the petitioner insisted that whenever the word is used by classical writers as descriptive of an individual character, it is particularly confined to *morals*, although when it is appropriated to the description of a nation it becomes a more general term, and includes the whole *manners* of the people—illustrating their distinction with the following examples: In the dialogue between Pamphilus and Davus, in the *Andria* of Terence—"uxorem his *moribus* dabit nemo." In Quintilian de *Philosophiâ*—"mores ante omnia oratori studiis sunt excolendi, atque omnis honesti justique disciplina pertractanda." Both senses are found in Horace, according to the rule laid down:

"Quid legea sine *moribus*  
Vanæ proficiunt?"

*Carm.* 24, lib. iii.

"Utinque defecere *mores*,  
Dedecorant bene nata culpæ."

*Carm.* 4, lib. iv.

"Rursus, quid virtus et quid sapientia possit  
Utile proposuit nobis exemplar Ulyssem;  
Qui domitor Trojæ, multorum providus urbes  
Et mores hominum inspexit; latumque per æquor,  
Dnm alibi, dum sociis reditum parat, aspera multa;  
Pertulit, adversa rerum immersabilia undis."

*Ep.* 2, lib. I.

"Ætatis cujusque notandi sunt tibi *mores*."

*Ars Poet.*

Virgil says,

———"Moresque viris et mœnia ponet."

*Æn. i.*

Tacitus observes the distinction. Speaking of persons put over the city, he says, "*magis alii homines quam alii mores*;" but describing the manners of a nation, *DE MORIBUS GERMANORUM*, he says, "*plusque ibi boni mores valent quam alibi bonæ leges*." So Juvenal:

———"de moribus ultima fiat

Quæstio.

Et linguam et mores."

*Sat. 3.*

There he means the *manners* of a city. So Martial, speaking of a picture:—

"Ars utinam mores animumque effingere possit."

*Ep. 32, lib. x.*

"Ardua res hæc est opibus non tradere mores."

*Ep. 6, lib. ii.*

"Templa Deis mores populis dedit."

*Ep. 104, lib. ix.*

The counsel for the College confined themselves to one quotation, with which they had been supplied by the Fellows, and which they declared to be decisive to prove that "*moribus*," applied to an individual, means *manners*. Ovid, in describing two of his mistresses, for whose *morals* nothing could be said, observes:

"Hæc specie melior, moribus illa, fuit."

*Lord Loughborough*.—"The petitioner's counsel have with great critical acuteness, and a classical collection of well-arranged instances, contended that in the best Latin writers the word '*mores*,' when applied to an individual, is always used to signify *morals*, and when clearly used with respect to a large body it includes all that larger circle which, for want of a more precise and distinct term, we call *manners*. I doubt a little if that distinction is quite correct; and rather apprehend that the term, whether applied to an individual or a nation, may be used indifferently in the more restrained or larger sense. One instance occurs to me in which, being applied to an individual, it signifies both. It is the beginning of Horace's address to Augustus:

"Quum tot sustineas et tanta negotia solus,  
Res Italas armis tuteris, moribus ornes."

"He does not exclude the virtues, and certainly he meant to include all the ornaments, of the character. I recollect another passage which I wish to quote, because the word appears twice in it, and it has a great analogy to the present case:—Says Cicero in his *De Officiis*,<sup>\*</sup> '*Sed omnium societatum nulla præstantior est nulla firmitior, quam cum*

<sup>\*</sup> Lib. i.

virī boni *moribus* similes, sunt familiaritate conjuncti. Illud enim honestum (quod sæpe dicimus) etiam si in alio cernimus, tamen nos movet; atque illi in quo id inesse videtur amicos facit. Et quanquam omnis virtus nos ad se alliciat, faciatque ut eos diligamus, in quibus ipsa inesse videatur, tamen justitia et liberalitas id maxime efficit. Nihil autem est amabilius nec copulativius quam *morum* similitudo bonorum. In quibus enim eadem studia sunt eademque voluntates—in his fit, ut æque quisque altero delectetur ac seipso; efficiaturque id, quod Pythagoras ultimum in amicitia putavit, ut unus fiat ex pluribus.’ In my conception, considering the manner in which these statutes are framed, the mode of election, and the society the founder has established, he meant to give the electors a full judgment—a taste—a feeling of the qualities of the person they were to subrogate in case of a vacancy—knowing that in such a society, consisting of a small number of persons, to be united under the roof of the same College for the purpose of education, jarring tempers, discordant dispositions, *dissimilitudo morum*, would mar the purpose of the foundation, so different from larger corporations, instituted for more public purposes, and more mixed with the business of the world. I cannot think the founder meant to tie them down to the test of little more than common honesty—without which, a man is unfit to be elected into any society. He rather intended to leave the choice as ample as possible, that the fellows might be in all respects fit for each other. Then have I to inquire further than what they have with great concurrence stated to me, ‘that the petitioner is not fit (non idoneus) to be a member of that society’? I cannot, therefore, compel them to elect the petitioner, nor order him to be admitted without an election. It would have been unfortunate, if a college consisting of so few members had been in the predicament, that there were means of forcibly introducing among them a gentleman whom, *however fit for greater and better situations*, they have unanimously declared not fit to be elected as their associate. I must therefore dismiss the petition.”

The last observation thrown in to soothe the feelings of the petitioner, who probably was excluded for his superior learning and capacity, shows that gentlemanly turn of mind which always distinguished Lord Loughborough, and covered many of his faults.

I ought to mention one other case which he decided, because it not only was perhaps the greatest in point of value that ever came before an English judge, but raised a question of law of much public importance; although it turned on such technical reasoning, that I cannot enter into the arguments on either side,—I mean *Thelluson v. Woodford*.<sup>2</sup> Peter Thelluson, by his will, left his immense real and personal property to trustees, that the rents and profits might accumulate during

<sup>1</sup> 2 Ves. Jun. 609—625.

<sup>2</sup> 4 Vesey, Jun. 227—343.



the lives of all his sons, and of all his grandchildren that should be living at his death, and of any grandchild that should be born within the usual time of gestation after his death—to be laid out in landed estates, which were to be finally divided between the representatives of his three sons—and failing his descendants, to go to pay the national debt. His family disputed the validity of the will, on the ground that although the *corpus* of the property might have been rendered inalienable for a period thus limited, the rents and profits could not be so disposed of; and that it was contrary to public policy to allow such an accumulation, which might render the individual in whom the whole might centre dangerous to public liberty, and too powerful for a subject. The suit coming on for a hearing, Lord Loughborough called in the assistance of the Master of the Rolls, and of Mr. Justice Buller and Mr. Justice Lawrence. After arguments which lasted many days, they gave their opinions at great length in favour of the validity of the will, and he very politely and prudently said,—

“I am extremely obliged to his Honour and to my Lords the Judges, not only for the very able assistance which they have given me in forming my own opinion upon this case, which concurs in the result, as in almost the whole of the argument; but also because they have relieved me from the duty of entering particularly into the discussion of the several points of the case, and the grounds upon which the arguments urged for the family have failed to produce conviction on my mind. I could not go over the case without the necessity of repeating what has been much better stated already. The great amount of the property is a sufficient reason for the family to seek to establish what would have been their natural right, if no disposition had intervened to deprive them of it. I have no difficulty in saying that this disposition is so unkind and illiberal, that I think it no breach of duty in them to seek to set it aside if they can. The amount of the property, however, can in no possible shape enter into the judgment. The same rule must prevail whether it be estimated at 100%. or a million. Nor can the piety or prudence of the disposition be considered. I am bound to give effect to the intentions of the testator, if they do not contravene any rule of law.”—He then briefly showed that there was nothing, as the law then stood, to prevent a direction to accumulate during any number of lives in being, together with the additional period of gestation—and thus concluded :—“I should do myself no credit, and should convey no sort of information to the Bar, if I were to go farther than to express my full assent to what has been so well stated by his Honour and the Judges, and again to return them warm thanks for their able assistance.”

The decree supporting the will was affirmed on an appeal to the House of Lords; but an Act of Parliament, introduced by Lord Chancellor Loughborough, was passed (39 & 40 Geo. 3, c. 98), forbidding such accumulations in future for a longer period than twenty-one years. All apprehensions of the Thelluson property swelling to a magnitude dangerous to the Crown or to public liberty, were effectually allayed by the Court of Chancery conveniently eating up almost the whole of the annual rents and profits;—and finally the possession of the property was given by Act of Parliament to the family, on their securing to the trust the very moderate sum which would have remained to accumulate after all law expenses were defrayed.

Although hardly any of Lord Loughborough's judgments were reversed, it must be confessed that their authority has not been considered very high among lawyers. When Lord Ellenborough was dining at a puisne Judge's,—having been long engaged in a discussion with him in the drawing-room, the lady of the house stepped up, and said, "Come, my Lord; do give *us* some of your conversation—you have been talking law long enough."—"Madam," said the Lord Chief Justice, "I beg your pardon: we have not been talking law, or anything like law; we have been talking of one of the decisions of Lord Loughborough!"

Before taking leave of him as a Judge, I ought to mention that while he held the Great Seal he disposed satisfactorily of the Appeal business in the House of Lords. For several years he was assisted in this department by Lord Thurlow; and afterwards, single-handed, he showed how easy is the task of reviewing the judgments of others to a man of good discretion, who is so far imbued with the general principles of jurisprudence as to be able, *pro re nata*, to understand any question of law well argued before him. He was generally inclined to *affirm*, perhaps unconsciously influenced by the practice which still prevailed, that upon affirmance no reasons were to be given; but occasionally he found that the Judges of the Court of Session in Scotland were palpably wrong,—when he very unsparingly exposed their blunders—ever retaining a grudge against a tribunal which had done so little justice to his own merits. It is a curious fact, that, although there were now published regular periodical reports of the cases determined in all the Courts of Westminster Hall, the decisions of the Court of dernier resort were still neglected; and it is wonder

ful to observe how little they have contributed to the formation of our Civil Code, whereas in most other countries the decisions of the Courts from which an appeal lies are rarely cited as authority.

We must now view Lord Loughborough presiding as Speaker of the Upper House. Here he appeared to advantage. From his courtesy and high bearing he was respected by the Peers of all parties; and, without arrogating to himself any special control, he had great influence on all questions of order; so that the deliberations of this most irregular assembly proceeded with a tolerable observance of decorum under his auspices. He never gave the signal from the woolsack for Ministerial cheers.

Nevertheless he was a uniform and zealous supporter of the Government, and, whatever differences he might have in council with his colleagues, he did not imitate Thurlow's example by displaying a public conflict between the Chancellor and the Prime Minister.

On the accession of the Whig alarmists, whom he had been so instrumental in bringing over, he possessed considerable influence in the measures taken at the commencement of the war. His favourite scheme of subsidising the Continental sovereigns was adopted, contrary to the opinion of Mr. Pitt and Lord Grenville<sup>a</sup>—and he succeeded in pressing the appointment of his friend, Lord Malmesbury, as the diplomatist to carry it into effect.<sup>b</sup> But his influence in the Cabinet soon declined, and some of the most important secrets respecting the negotiations with the French Republic were not communicated to him. He strongly took part with Burke in disapproving of Mr. Pitt's policy as a war minister.

His first speech in the House of Lords, as Chancellor, was in the debate upon an address to the King for an augmentation of the forces, in consequence of late events in France, and particularly the tragical end of the French King. He immediately followed the Marquess of Lansdowne, who, deploring this event, still expressed an

Feb. 1,  
1793.

<sup>a</sup> "Nov. 14, 1793. Dined with the Chancellor; no one there but Parnell, Chancellor of the Exchequer in Ireland. When he went, I staid some time with the Chancellor. Much substantial talk;—he, for giving a large subsidy to the King of Prussia; but Pitt and Grenville think otherwise."—*Lord Malmesbury's Diary*, iii. 6.

<sup>b</sup> "I received an express despatched at the desire of the Lord Chancellor, who wrote me a letter, saying, 'he had received a note from Lord Grenville, and that both Lord Grenville and Pitt entreated me to accept a commission on the Continent, of great consequence.'"—*Diary*, ii. 5.

opinion that there was no sufficient ground for quarrelling with the new Republic, and insisted that Ministers were going to war only in support of metaphysical distinctions between different forms of government. *Lord Loughborough*: "The catastrophe which has lately happened at Paris has not only changed the garb of this nation, but has impressed every individual in it with sorrow, as on the death of a beloved relative. There would have been a great indecency in excluding all reference to it in the address to the Crown; for it has a material bearing upon our public relations. The noble Marquess has said, that this is to be a war of *metaphysics*, but who are the *metaphysicians* we are to encounter? They are 120,000 French soldiers; their cannon and their bayonets are the arguments which they use. Lessons have been thus taught by them in Nice, Frankfort, Geneva, and the Low Countries. As things now stand, it would not even be sufficient to require France to return within her ancient limits, for she would still leave behind her the contamination of her doctrines, and the poison of her example." He then animadverted upon a profession which Lord Lauderdale had made of a friendship for Brissot: "Friendship and affection," said he, "are matters of taste. I possess none of the innovating taste myself, and so am unable to account for it in others; but the prevailing taste of some men is for revolutions, massacre, war, confusion, and the killing of Kings. I do not envy the congenial taste which forms friendship with the propagator of principles leading to such enormities."<sup>c</sup> He poured out much more of such invective, which was then very popular;—and an amendment to the address was negatived without a division. I think there is ground to lament the tone of indiscriminate vituperation against all concerned in the French Revolution, which was now assumed in England; for it aggravated the excesses committed in France, it actually endangered the existence of freedom in this country, and it rendered more humiliating to us the victories obtained on the Continent by the republican arms.

Our Chancellor's next appearance was in the character of a jester, which was not natural to him, and which he rarely assumed; but on this occasion he seems to have been much applauded by the Lords spiritual as well as temporal. Miss Pulteney, the heiress of the rival of Sir Robert Walpole, had been created Baroness Bath, there being a Marquess of Bath

<sup>c</sup> 30 Parl. Hist. 331.

of another family existing. Lord Radnor made a motion in the House of Lords against this patent,—contending that it was unconstitutional and illegal to create two peers with the same title, and that great inconvenience would arise from it, as in their Lordships' proceedings "BATH" might often appear opposed to "BATH." *Lord Loughborough*: "My Lords, there have sat in this House, at the same time, Lords Grey, Lords Percy, and Lords Howard, without end. Besides, in this case, there is a sure way of preventing the future antagonism which haunts the imagination of the noble Earl, for the heir apparent of the Marquess being a bachelor, he may marry the young and beautiful Baroness—and then 'BATH' will be merged in 'BATH!'"<sup>d</sup> Lord Radnor had only one peer to divide with him.

Much more serious subjects were soon to occupy the public mind. Now began that system of policy, for the repression of French principles, which has caused the period in which it prevailed to be designated, in the language of exaggeration, "the Reign of Terror." I think the system was unwise, and that Lord Loughborough is chiefly answerable for it. I am afraid that, if he did not originate, he actively encouraged it, and that he, as the organ of the alarmist party, forced it upon the reluctant Prime Minister. Pitt had not only come forward in public life on the popular side, but I believe that his propensities continued liberal, and that if he could have fulfilled his wishes he would have emancipated the Catholics,—he would have abolished slavery,—he would have established free trade,—and he would have reformed the House of Commons. His regard for the liberty of the press he had evinced by carrying Fox's Libel Bill by the influence of Government, notwithstanding the furious opposition of Lord Chancellor Thurlow. He was likewise particularly adverse to any stringent measures against reformers, being aware that having himself very recently belonged to that body, he would appear rather in an invidious light as the persecutor of his former associates. But he found that he could not adhere to constitutional laws and constitutional practices, without the disruption of his Administration. Burke's indignation was now diverted from Warren Hastings and directed against all who did not agree in condemning every thing that had been done in France since the calling of the States General, and in defending all the ancient abuses of the French monarchy.

Lord Loughborough, as his organ in the Cabinet, pressed for measures of coercion and intimidation.

It must be acknowledged that the crisis was perplexing. There were unprincipled individuals in this country, who were willing to engage in a revolutionary movement, in the hope of at once rising to power and wealth: and there were enthusiasts who were, without any dishonest motive, desirous of making the experiment of a republic. The often-resounded dread of French *emissaries* was most chimerical; for Englishmen will never be influenced by a foreigner who cannot address them in their mother tongue. But there was no saying distinctly how far the political frenzy might run. The question arose, what was the most effectual method of checking it? We, from our experience, should say,—“by adhering to the ancient frame of the Constitution, by correcting abuses, and by making the laws more loved and respected.” A very different conservative view was taken by Lord Loughborough and his friends in the year 1793. Any reform of any enormity they denounced as a dangerous innovation leading to revolution; they were determined to vest in the Executive Government extraordinary and unconstitutional powers, and they vowed vengeance, by the terrors of criminal law, against all whom they denounced as disaffected. Happily, English juries and the returning sober sense of the English people at last saved public liberty from the great peril to which it was then exposed.

The first measure prompted by Lord Loughborough, after coming into the Cabinet, was called the “Traitorous Correspondence Bill,” by which, in addition to the law of Edward III. against adhering to the King’s enemies, which had been found sufficient for many ages, it was made high treason, to be punished by hanging, beheading, quartering, forfeiture, and corruption of blood, to hold any correspondence with the French, or to enter into any agreement to supply them with any commodities. This was strongly opposed by Lord Lansdowne and Lord Lauderdale, but, on account of a temporary success of the allies on the Continent, was defended by the Chancellor in a very vaunting and arrogant tone. “Is it quite clear,” he asked, “if the policy recommended by noble Lords opposite had been pursued, that the internal peace of the country would have been maintained? Is it certain that deputations of fraternity to the French Convention would have ceased? that the same general spirit of

loyalty we now witness would have been called forth? that those clubs to which some of the opposers of this bill belonged would have shrunk from their purpose, and disappeared? that the projected conquest of Holland would have been abandoned? and that a stop would have been put to a systematic attack on the government, the religion, and the morals of the country? The noble Lords opposite have sneered at the small force landed on the Continent under the command of an illustrious Prince: but to the sending out of those troops, and to the promptitude with which the measure was carried into effect, in my opinion, is to be ascribed that Holland is saved; that the French are every where defeated and driven back; that all Europe, from Naples to St. Petersburg, is delivered from the plunder, the confiscation, the rapine, the murder, the destruction of order, morality, and religion, with which it was threatened by the prevalence of French arms and French principles." Seven peers, and no more, divided against the bill.<sup>e</sup> Alas! in a few weeks the Duke of York was forced to fly from Dunkirk, Holland became a province of France, and the Republican legions, bearing the tricolor, were crossing the Rhine and the Alps.

In the following year Lord Loughborough supported a bill for the suspension of the *habeas corpus*, on the ground May, 1794. that the societies professing to be founded for parliamentary reform were aiming at revolution. "Parliamentary reform," said he (not very courteously to Mr. Pitt), "was tried, settled, and extinguished in 1781 and 1782, and it can now only be used as a cover for deeper designs. The phrase of *parliamentary reform* no more legalises seditious meetings than GOD SAVE THE KING written at the bottom of an insurrectionary proclamation would make it innocent. Much is said of the low rank of the members of most of these societies, and their little power to do mischief; but it is easy to treat as imaginary all dangers that are checked in the bud. One of the finest poets has said,—

‘ Treasons are never own’d but when descried;  
Successful crimes alone are justified.’ ” f

In the debate on the Report of a Secret Committee on Seditious Practices, Lord Lauderdale having alluded to political meetings in former times at the Thatched House, and particularly to the dinner given there on the occasion of Mr.

Wedderburn, Steward of the Chiltern Hundreds, vacating his seat in the House of Commons, that he might stand up for Wilkes and Liberty,<sup>s</sup> the Lord Chancellor said, "Had the Thatched House meetings of the present day, like their predecessors, confined themselves to foolish speeches, no notice would have been taken of them; but, as they resort to overt acts of treason, they must be put down with a strong hand."<sup>b</sup>

During the recess of Parliament which soon followed, there was a great danger of the Government being dissolved by a quarrel between the old Tories and their new Whig allies. Mr. Burke, notwithstanding his deep affliction from the loss of his son, being asked by Lord Loughborough to step in as a mediator, wrote him the following letter:—

"MY DEAR LORD,

"Nothing can be in itself so disagreeable to me as to go to London, or to show to the world the face of a man marked by the hand of God. At first, therefore, I doubted whether I ought to go. I am even now apprehensive of intruding myself into an affair into which I am not called by the parties. I know by abundant experience, under what suspicious circumstances all advice comes that is not required, and how little weight it is likely to have. But since your Lordship thinks that heats begin a little to subside, that a way is made for removing difficulties, so that a small matter, even from a very inconsiderable person, may have its effect in setting things to rights, I will come to town in order to receive and to obey your instructions. I propose to be there on Tuesday. There is nothing in my power which I would not most willingly do towards clearing up this dreadful misunderstanding. I really consider the fate of the King and the country, and perhaps, at no very remote distance, of mankind itself, may depend upon the good agreement of those now in place. You certainly have done your part, and have done it well, and I shall be ready to act under you as you shall direct. There are none of the parties to whom I have not great obligations. Since it has pleased the Great Disposer, contrary to the general order of nature, to keep me here, and without any effort of my own to make provision for my existence, He certainly meant, that as I have neither the aptitude nor the disposition to enjoy any satisfaction, I have some duty in suffering or acting to fulfil. As to the latter part, as I have quitted what is called active life, to which I have been led by reason, inclination, and the sad necessity imposed upon me by sorrow, age, and infirmity, I do not know in what way I can be serviceable but by giving, when asked, such an opinion as I have formed, impartially, on the long and melancholy experience in affairs which I have had. I am a pensioner of the Crown, and I eat the bread of the public, which has a full right to demand all that in the retreat provided for me it is

<sup>s</sup> See *antè*, Vol. VII., p. 390.

<sup>b</sup> 31 Parl. Hist. 915.



possible for me to perform. God give you success ; and believe me ever, with the most sincere sentiments of respect and affection,

“ My dear Lord,

“ Your Lordship’s most faithful and obliged humble servant,

“ EDM. BURKE.

“ Beaconsfield, Nov. 2, 1794.” i

Mr. Burke, in another letter to Lord Loughborough, gives an account of his vain efforts as a peace-maker :—

“ MY DEAR LORD,

“ I have written to Mr. Dundas thanking him for his obliging permission to wait upon him, but as he expresses himself with so little hope of any reconciliation, I shall forbear to trouble him till things wear a better aspect than they do at present. What you mention of the conversation at Court, confirms me more strongly in the idea of not seeing him until he desires it. He knows that I am ready to attend him,—and, if he really wishes that we may confer on the matter, he will tell me so. If, notwithstanding the conversation with the D. of P. with which Pitt seemed so fully satisfied, his jealousies and apprehensions are, from some representation or other, grown more violent than ever, what can I say to remove them ? I am so far from having any authority from the parties to disclaim any such intentions as are attributed to them, that I have never spoken with the D. of P., nor very lately with Lord F. ; so that if Pitt gives credit to his informant, I know not what to say. For my part, I don’t believe a syllable of the matter, but that the whole is an absolute invention of somebody to render this misunderstanding incurable. Why in the name of God don’t they meet together, and know what their mutual intentions are ? When I can say or do any thing with authority, I shall certainly do it. In the mean time I shall see your Lordship at your desire, and am ever, my dear Lord,

“ Yrs. most truly,

“ EDM. BURKE.

“ Nov. 8, one o’clock A.M.” k

In spite of these inauspicious appearances, the breach between the opposite parties was adjusted for the present, and at the commencement of the new session “ the necessity for a vigorous prosecution of the war ” was, at the suggestion of the Chancellor, announced in the King’s Speech, in such terms as fully satisfied Mr. Burke and his followers.

The next coercive measure brought forward was a “ Bill to put down Seditious Practices.” When it was in committee the Duke of Leeds having moved an amendment, that after the

words, "to overturn the established Constitution," there should be added, "consisting of King, Lords, and Commons," the Chancellor said, "the amendment would legalise all libels on the Constitution which affected to preserve a King, a House of Lords, and a House of Commons. For instance, a person might write thus: 'The Constitution of England consists of King, Lords, and Commons. But I do not like an hereditary monarchy, for it is an absurdity. I think an hereditary House of Lords still worse; and the House of Commons, as at present chosen, is a nuisance. I would have an elective monarchy, a peerage for life or for a session of parliament, and a House of Commons returned by universal suffrage.' Here you have a man admitting a constitution, consisting of 'King, Lords, and Commons,' and proposing a Revolutionary Government."<sup>m</sup> The enactments of the bill were so arbitrary, that Lord Thurlow thought this a good opportunity of displaying his patriotism by opposing it; but it passed by great majorities.

The finish was given to the new penal political code by the Dec. 9, "Seditious Meetings Bill,"—which forbade the King's 1795. subjects to meet together in public for any purpose without the licence of a magistrate. Lord Thurlow having furiously opposed it as entirely inconsistent with a free government and unsuitable to our national character, it was defended by Lord Loughborough, who did not venture to taunt his antagonist with inconsistency, but said,—

"The noble and learned lord has contended that the genius and character of the two nations are dissimilar, and that it is absurd to suppose they can both be governed by the same laws. Upon that principle he has refused to take a salutary warning by the dreadful scenes which have passed among our neighbours. Is man so different from man, on the opposite sides of a narrow strait, that similar associations in each—assuming the same forms and affecting the same tone—are not likely to be attended with similar effects? Will the Protestant divines of England declare that they apprehend nothing from the avowed atheism and scandalous profaneness now disgracing France? Do prudent politicians see no danger in the general confusion which must necessarily result from the propagation of doctrines and systems of government destructive of all order, all subordination, all property, all security, and all happiness? Will the noble and learned lord venture to assert that we ought to remain supine in the midst of inflammatory and seditious harangues, and libellous and treasonable pamphlets and newspapers? It has ever been the practice of wise governments to anticipate by preventive regulations, in order to ward off impending evil. The libels cir-

<sup>m</sup> 32 Parl. Hist. 255.

culated by the Corresponding Society represent our Monarchy as despotic; the House of Lords as useless; and the Commons corrupt. When the demagogues are asked what they mean by *reform*, and are called upon to produce their plans, they talk of 'universal suffrage, and infeasible elective rights, which cannot be bartered away.' In order to reform, they say, 'you must destroy boroughs and corporations, and divide the whole kingdom into sections.' Does not all this involve us in the miserable state of France? The existing laws are insufficient, and all that we propose necessity demands."

Worse proceedings were going on than loading the statute book with such enactments,—which might have remained *brutum fulmen* till swept away in better times. Spies and informers employed by the Government not only pretended to give information respecting political associations, but invaded the sacred privacy of domestic life. In consequence, "State trials" took place, both in Scotland and in England, upon which we now look back with shame.

The prosecution of Muir for sedition, before the Court of Justiciary in Edinburgh, was probably suggested, and was certainly vindicated, by Lord Loughborough and the Government. A.D. 1794. This "martyr" was a young advocate at the Scotch Bar, of good family, of high literary attainments, of promising talents, and of unblemished honour. The witnesses called against him by the Crown admitted that he was attached to our monarchical form of government, and that he always inculcated obedience to the laws. But he was (as Mr. Pitt had been) a warm friend to parliamentary reform; and he continued to *agitate* for it at a time when, in the eyes of some of its former supporters, it had become as odious as rebellion. He took the lead in proposing resolutions and petitions in favour of the measure in clubs and at public meetings—using language which in the years 1831 and 1832 would have been considered tame and conservative. The charge that he had distributed seditious writings was supported by evidence that a copy of Paine's *Rights of Man* was found in his great-coat pocket. The presiding Judge (according to the power then vested in him) selected a jury, all of whom belonged to an association that had pronounced a strong opinion against parliamentary reform, and one of whom voluntarily declared his unfitness to serve, as he held an office under Government. I must do the Lord Advocate of that day (Dundas) the justice to

<sup>a</sup> The Reform Bill, which was passed in 1832, would have appeared to Lord Loughborough hardly less unconstitutional and pernicious.

observe, that he seems to have been most heartily ashamed of the task imposed upon him ; and in his short and feeble speech he hardly ventured to contend that a case had been made out for a conviction. Mr. Muir defended himself with force, eloquence, and decency, thus concluding :—

“ What, then, has been my crime ?—having dared to be, according to the measure of my feeble abilities, a strenuous advocate for an equal representation of the people in the House of the people—having dared to attempt to accomplish by legal means a measure which I conscientiously think will diminish the weight of their taxation, and put an end to the effusion of their blood. From my infancy to this moment I have devoted myself to the cause of the people. It is a good cause, and it will ultimately triumph. If I am to be found guilty, say then that you condemn me only for my attachment to this cause, and not for those vain and wretched pretexts stated in the indictment, intended merely to colour and disguise the real motives which have led to my accusation. I may be doomed to languish in the recesses of a dungeon—I may be doomed to ascend the scaffold ;—but nothing can deprive me of the recollection of the past—nothing can destroy my inward peace of mind arising from the consciousness of having done my duty.”

The Lord Justice Clerk Braxfield summed up violently against him, and hardly attempted to conceal that the *corpus delicti* was the advocacy of parliamentary reform. Censuring the getting up of a petition on the subject to the Lords and Commons, he said, “ Mr. Muir might have known that no attention would be paid to such a rabble. What right have they to representation ? He might have told them that the Parliament would never listen to their petition. How could they think of it ? A government in every country should be just like a corporation ; and in this country it is made up of the landed interest, which alone has a right to be represented. As for the rabble, who have nothing but personal property, what hold has the nation of them ? What security for the payment of their taxes ? They may pack up all their property on their backs, and leave the country in the twinkling of an eye ; but landed property cannot be removed.” The jury (as had been anticipated when they were sworn) unanimously found the defendant guilty, and the Court sentenced him to be transported beyond the seas for fourteen years,—taking great credit for their humanity in not having pronounced sentence that he should be hanged or exposed to wild beasts—punishments which for such an offence they claimed the power to inflict—saying, “ By the Roman law, which is held to be our

common law, where there is no statute, the punishment was various, and transportation was among the mildest mentioned. Paulus, 38 Dig., ‘*de Poenis*,’ writes, ‘*Actores seditionis et tumultus, populo concitato, pro qualitate dignitatis, aut in furcum tolluntur, aut bestiis obijciuntur.*’ We have chosen the mildest of these punishments. Baldus writes, ‘*Provocans tumultum et clamorem in populo, debet mori poenâ seditionis.*’”

The case created a deep sensation in England, and was immediately brought before the House of Lords by Earl Stanhope, who pointed out the enormity of the whole proceeding, and moved an address to the Crown, praying that the execution of the sentence might be postponed :

*Lord Loughborough*.—“Granting that there has been a mistrial—that the verdict of the jury is not justified by the evidence—that the conduct of the Judges has been founded in misapprehension—that there has been a misapplication of the law—in short, if there has been any irregularity in the trial or the sentence, there is a remedy provided by an application to the Crown to bring the whole matter into a revision. But who ever heard of an application to this House to pray his Majesty to postpone the execution of a sentence? If ever your Lordships should think fit to entertain an inquiry into the case, I pledge myself that you will find the conduct of the Judges in Scotland to have been altogether such as your Lordships would desire to find in men intrusted with functions so important.”

Such an impression was produced by these observations, that, when the division came, Lord Stanhope went below the bar all alone.<sup>P</sup> Accordingly, Mr. Muir, along with the Rev. Thomas Fyshe Palmer, a clergyman of the Church of England, sentenced to transportation by the Court of Justiciary in Scotland under circumstances hardly less atrocious, having been shipped off for Botany Bay among burglars and persons guilty of the most horrible crimes,—the Earl of Lauderdale, after a very able speech, explaining the mockery of justice which had been exhibited on their trials, moved that there should be laid before the House of Lords copies of the indictments against them, with the minutes of the Court respecting the challenge of jurors, and the subsequent proceedings till final sentence. But Lord Loughborough boldly defended all that had been done; and, not satisfied with negating Lord Lauderdale’s motion,—carried, without a division, a counter resolution of his own, “That there is no ground for interfering in the practice of the established Courts of Criminal

<sup>o</sup> 23 St. Tr. 118—258.

<sup>P</sup> Content, 1; Non-contents, 49. 30 Parl. Hist. 1302.

Justice, as administered under the Constitution, by which the rights, liberties, and properties of all ranks of subjects are protected."<sup>9</sup>

Meanwhile there were political prosecutions going on in England still more alarming to liberty, although they were conducted with greater respect for the forms of law. Mr. John Frost, an attorney of eminence, under the influence of wine, and provoked by impertinent questions put to him after dinner in a coffee-house, having foolishly said, "I am for equality, and no King," was, with the entire approbation of the Lord Chancellor, prosecuted by the Attorney-General, and sentenced to be imprisoned six months in Newgate, to stand one hour in the pillory at Charing Cross, and to be struck off the roll of attorneys,—whereby he was ruined for life.<sup>r</sup>

The country magistrates naturally followed such a precedent, and similar prosecutions were multiplied at Quarter Sessions. A complaint was made to the Chancellor of a sentence in Kent of a twelvemonth's imprisonment on a loyal yeoman who, in his drink, being rudely assaulted by a constable as drunk as himself, and ordered by him to keep the peace in the King's name, stammered out, "D——n you and the King too;"—but his Lordship said, that "to save the country from revolution, the authority of all tribunals, high and low, must be upheld;" and he refused to interfere. The violence of the times is more thoroughly illustrated by the consideration that he was by nature a mild man,—and that at no former period of his life had he shown the slightest inclination to overstrain the criminal law.

But having begun in this course, and finding, from the revolutionary panic which had seized men's minds, that for the time it was rather popular, and strengthened the Government, he boldly advanced in it, and soon nothing less would satisfy him than having the heads of John Horne Tooke and the leading Reformers stuck on Temple Bar.

I must reserve for the Life of Erskine a full account of the famous Treason Trials which took place in the end of the

<sup>9</sup> 31 Parl. Hist. 284. There has been a strange attempt lately to defend these atrocious proceedings. But the following is the testimony of an eye-witness who ever remained true to liberty:—"The administration of justice in Edinburgh is, I think, detestable. I am not surprised that you have been shocked

at the account you have read of Mnir's trial. You would have been much more shocked if you had been present as I was." Romilly to Dumont, *Memoirs*, vol. i. p. 23.—*Note to 4th Edition.*

<sup>r</sup> 22 St. Tr. 471—522. See a statement of this case in the Life of Erskine.

year 1794,—covering him with glory, and the prosecutors with disgrace,—and I can now only briefly notice the circumstance that Lord Loughborough was a principal adviser of them. He had surrendered himself to the wildest apprehensions of Burke; he feared that any encouragement of parliamentary reform was tantamount to revolution; and he believed that general bloodshed would be saved by the sacrifice of a few individuals. The reflection rejoiced him, that on this occasion *he* was not liable to the taunt of being a renegade, for during *his* patriotic days he had only to inveigh against the injustice done to the electors of Middlesex,—and the plan of reforming the representation of the people had not been seriously brought forward. Perhaps he was not very sorry to think that the Prime Minister must wince while his own withers were unwrung; for there was an increasing alienation between the *original* and the *conscript* members of the Cabinet,—Pitt confining his confidence more and more to Henry Dundas and Lord Grenville; and the disciples of Burke condemning his conduct of the war, lamenting his want of spirit, and talking among themselves of another Chief. When the plan was first proposed of arresting the members of the Corresponding Society, and proceeding capitally against them, it is said that Pitt, who had studied the law, expressed some disapprobation of the notion of “constructive treason,” but he did not like to rely upon the objection that the Duke of Richmond and himself had supported similar doctrines, and no doubt in his heart he believed that under the pretence of parliamentary reform deeper designs were now carried on. The Attorney and Solicitor-General, being consulted by the Chancellor, gave an opinion that the imputed conspiracy to change the form of government was a compassing of the King’s death within the meaning of the statute of A.D. 1795. Edward III.,—and the King himself, upon this opinion, was eager for the prosecutions. So in an evil hour an order was made that they should be instituted, and warrants were signed for the arrest of the supposed traitors.

The result is well known. To the credit of George III., when the whole subject was understood by him, he rejoiced in the acquittals, and, laying all the blame on the Chancellor, he said, “You have got us into the wrong box, my Lord, you have got us into the wrong box. Constructive treason won’t do, my Lord, constructive treason won’t do.”

The long-pending trial of Warren Hastings at last ap-

proached its conclusion, under the presidency of Lord Loughborough, who, notwithstanding his belief in the truth of most of the charges, conducted himself with impartiality as well as dignity. The interest of the proceeding had greatly declined, and the public sympathy was all with the accused. Mr. Burke, however, was still unrelenting, and, when the evidence and the speeches had closed, in the fervour of his zeal he wrote the following letter to the Chancellor,—overlooking the impropriety of a prosecutor privately seeking to influence a judge :—

“MY DEAR LORD,

“It would be shameful, after the long toil of both Houses, and the enormous expense of the public, that the trial of Indian speculation and oppression should have an unjust, or a lame and impotent, conclusion. Sequestered as I am from the public, I should be infinitely concerned that such a thing should fall out at any time, but particularly at a time when you presided in the House of Peers. I should be equally sorry to have my poor remains of life employed in justifying the last fourteen years of it by preparing a stable record of their proceeding in every part of Europe, necessarily concluding to the perpetual infamy of a body which, God knows, I wish to be held in perpetual honour, I mean the House of Lords. This affair, in my opinion, ought to be adjourned over until some person can be found to state the several prominent parts—namely, the leading facts, and then the criminal inferences, and lastly, the matters of aggravation or extenuation as they appear in the evidence. This thing cannot be left to the known partisans of the delinquent—amongst the most desperate of whom I must reckon (between ourselves) your clerk, Mr. Cowper. He is likely to make the worst *rapporteur* that can be found. We are preparing a syllabus, which will be printed for the use of such Lords as wish to know what case we would be thought to have made out. Excuse this trouble from one of your sincere wellwishers.

“I am ever, with the most sincere respect and regard,

“My dear Lord,

“Your Lordship’s most faithful and obliged humble serv<sup>t</sup>.

“EDM. BURKE.

“Beaconsfield, Jan. 10, 1795.”

I am not aware what answer was returned, but I presume it must have been a mild refusal to listen to the proposal, as the Chancellor was bound to take no part in the proceedings except judicially.

During the long-continued discussions among the Peers themselves on the merits of the case, he was engaged in several sharp contests with Thurlow, who still eagerly advocated



the cause of the defendant. When the verdict was to be given, the Chancellor said "Guilty" on all the sixteen charges except three; but of the Peers who voted—reduced by casualties since the commencement of the prosecution to twenty-nine—there being on every charge a large majority who said "Not Guilty," he had the task, which he performed very courteously, of announcing to Mr. Hastings that he was acquitted of the crimes and misdemeanors whereof he had been impeached.

He afterwards received the following very interesting letter from Mr. Burke, beginning with an allusion to the attack on the writer by the Duke of Bedford, which led to one of the finest effusions of genius,—and concluding with a bitter protest against the proposal, that all the expenses of the prosecution on both sides should be paid by the public:—

"MY DEAR LORD,

"I am, now the thing is over, to thank you for the handsome part you took in the first attack on me. It may appear odd, but the fact is that until the speech was sent to me, under a cover, by post that came in on Saturday, I had never seen an account of the kind things you were pleased to say of me. It will appear odd, but it is true, that I never read the attacks made on me by the D. of Bedford and Lord Lauderdale, but had them merely from a verbal, but I think a faithful and an exact, relator, who told me of them, and of Lord Grenville's defence of me. I trust I am not disposed to be ungrateful, and I should certainly have paid your Lordship the share of the compliment I owed you, if I had known how much I was indebted to you for what I have ever thought, and shall think, a great honour and consolation to me—your acknowledging your long-continued partial opinion of me. The newspapers, and all the matter they contain, have been long hateful to me. I pass months without looking into one of them, and I faithfully assure you, that until Clairfait's victories, I was a long time indeed without casting my eyes on a paper. I only knew what was going on by conversation, from which I could not disengage myself.

"The regard I set on your good opinion will not permit me to let you imagine for a moment that I am insensible to the blow which is attempted at my reputation, and at a reputation of infinitely more moment than mine. Mr. Hastings is publicly rewarded for the crimes which your Lordship knows have been *proved* against him at the bar of the House of Lords. The House of Commons, for the first time that this infamy has happened to them, are condemned in costs and damages. It is the first time that any *public* prosecutor has been so condemned. Robbery so rewarded by new robbery. Oh no! It shall never be said, never, never, that the cause of the people of India, taken up for twenty

years in Parliament, has been compromised by pensions to the accused and the accursed. The blood of that people shall not be on my head. The example of such a desertion of a cause, and prevarication in justice, is a dreadful example. I shall, I hope, by the end of the week, petition the House of Commons. Excuse this trouble. Your goodness to me entitles you to a communication of every material step I take in life. I confess I never expected this blow. As to the acquittal, that it was total I was surprised at—that it should be so in a good measure, I expected from the incredible corruption of the time.\*

"I have the honour to be, with the most respectful affection,

"My dear Lord,

"Your most faithful and obliged humble servant,

"EDM. BURKE.

"Beaconsfield, March 7, 1796."†

But, notwithstanding Burke's dying efforts, the resolution respecting costs, of which he complained so bitterly, remained unaltered; and he is now generally supposed to have displayed a want of sound judgment and good feeling in the whole course of that prosecution, on which he chiefly relied for a great reputation with posterity.

\* So earnest was Mr. Burke on this subject, that he likewise sent the following letter to the Duke of Portland:—

"My dear Lord,

"I little expected that, under an Administration in which your Grace had a part, the House of Commons should be condemned in damages to an immense amount to Mr. Hastings. We charged him with a robbery of the people of India—we reward him by a robbery of the same people. Your poor old friend does not choose to be actively or passively a party in this nefarious act of speculation; I therefore propose, as my dying act,

and I should have no objection to perish in that act at the bar of the House of Commons, to petition against this robbery of India, and treachery to those employed to prosecute. I only think it right to give your Grace this notice. This poor scroll requires no answer.

"I have the honour to be, with the highest respect and affection,

"My dear Lord,

"Your Grace's most faithful and obedient humble servant,

"EDM. BURKE."‡

† Ross. MSS.

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‡ Ross. MSS.

## CHAPTER CLXXIII.

CONTINUATION OF THE LIFE OF LORD LOUGHBOROUGH TILL THE COMMENCEMENT OF THE INTRIGUES WHICH ENDED IN HIS RESIGNATION AND THE DISSOLUTION OF MR. PITT'S ADMINISTRATION.

MR. HASTINGS'S acquittal was soon forgotten by the public amidst the stirring events of the war which raged with such violence. There being an alarm of invasion, a proposal was made to arm the people in mass; but this was strongly opposed by the Chancellor, who contended that arms should never be permitted to any, except under the direction of men of property; and that the conduct of the "National Guard" in France should be a warning to us to intrust our defence exclusively to the King's regular army.<sup>a</sup> A.D. 1795.

The Opposition in the Upper House was now almost entirely confined to Lord Stanhope;—and, to silence him, the Lord Chancellor put his resolutions from the woolsack without reading them, and, when they were negatived, had them expunged from the Journals.<sup>x</sup>

The Whigs made a rally to support the Duke of Bedford's motion for peace with France; but the Chancellor said that "it was not fit to be put on the Journals;" and a counter-resolution, moved by Lord Grenville, for a vigorous prosecution of the war, was carried by a majority of 88 to 15.

There was at this time a great coolness between Lord Loughborough and the Prince of Wales. His Royal Highness had been for a short time an "*alarmist*," but he ever hated Pitt, and he again associated familiarly with Fox and Sheridan,—regarding him who was to have been his Chancellor under the Regency as little better than an apostate—a character for which, till he actually was Regent, he expressed bitter contempt. The wary Scot was uneasy at this state of affairs; for there were from time to time symptoms indicating that the Regency question might be speedily renewed; and, at

<sup>a</sup> 31 Parl. Hist. 135.

<sup>x</sup> 1b. 149.

any rate, he disliked the notion of encountering the frowns of the Sovereign in a new reign. He was therefore anxious to soothe the Heir Apparent, and he thought he had an opportunity of doing so in supporting the bill for granting an annuity to his Royal Highness, and for preventing him from *assigning* or *charging* it. In this courtly strain did he answer certain objections of Thurlow, who had become a special favourite at Carlton House, and was by no means without hope of resuming the Great Seal :—

“The restrictions complained of by the noble and learned Lord, so far from being insulting to his Royal Highness, testify the profoundest respect for his feelings, as well as his dignity. The reason for the extraordinary circumspection complained of, is because a deeper interest is taken in the conduct of princes than of private individuals. If they outrun their fortune, their ruin is seen by the public with cold indifference ; but all sympathise with the imprudence of a prince. He is constantly tempted to expense without habits of economy. Even his virtues here are against him. His taste, his love of the arts, his liberality, his munificence—all lead to expense. In fact, he is educated to expense in every possible shape, and is often reduced to the option of acting with imprudence and extravagance, or appearing mean and narrow-minded. The latter imputation the nation would never wish to see cast upon an English prince. They neither expect nor desire that he should count over pounds, shillings, and pence with the minuteness of a petty tradesman. The restrictions are intended not to wound the honour of the Prince of Wales, but to shield him in future from the perils to which men of his exalted rank are exposed. They are, properly speaking, restrictions not on his Royal Highness, but on those about him—to restrain the hand of extravagance, and to guard against profusion.”

Lord Loughborough, finding that the Prince of Wales was not in any degree appeased by this flattery, never afterwards attempted a reconciliation with him, but, leaving him under the undisputed sway of Thurlow, during all the subsequent disputes which disturbed the Royal family he in a very decided manner took the opposite side. Ever striving to gain the personal favour of George III., he openly enlisted himself in the band of the “King’s friends”—which still subsisted, though much diminished in influence by the lofty ascendancy of Pitt.

It is curious to observe, from the following note, the terms of distant civility on which he now was with the chief under whose banner he had some years gallantly fought :—

"Mr. Fox presents his compliments to the Lord Chancellor, and as a meeting of his constituents is to assemble to-morrow in Westminster Hall, for the purpose of petitioning Parliament, takes the liberty of submitting to his Lordship that it would be a great accommodation to the meeting, and a civility for which the gentlemen who mean to attend it would be much obliged to his Lordship, if the Court of Chancery could, without injury to public business or inconvenience to his Lordship, be adjourned at an early hour.

' South Street, 15th Nov. 1795." 7

In fulfilment of a promise made to Lord Loughborough, when he led over the "alarmists" to Mr. Pitt, he received a re-grant of his barony of Loughborough, with a remainder to his nephew, Sir James St. Clair Erskine. On this occasion, he had, for some reason that I am not aware of, consulted the Earl of Moira, and he received from him the following congratulation :—

"Donington, Oct. 7th, 1795.

"MY DEAR LORD,

"The letter with which you have honoured me claims acknowledgments that, as I trust you will believe, are not merely matter of form. The delicacy of your hesitation respecting the extension of your present title, so very different from the fashionable tone of the day, is a particular and most kind compliment to me. You will feel that, esteeming it such, I could not repay it otherwise than by meeting it with entire frankness; so that you will give full trust to my answer. With the interest which I must take in the credit of the title of Loughborough, I should grieve that you transmitted any other to your family. The further destination of your honours is an event that in itself gives me unfeigned gratification. But I assure you I shall have additional satisfaction if the continuance of the title of Loughborough may be supposed to imply any reciprocation of regard between us. The respect which my uncle bore to you was inherited by me, and has never been shaken by any diversity of public opinion. I always flattered myself that I possessed your friendship. I feel it very sensibly in the present instance, and I only wish that my acquiescence, in a case where certainly you were perfect master to make the decision without reference to me, could have any pretension to being considered as a testimony of esteem.

"The matter shall not be mentioned by me. But in the mean time I beg you to accept my sincerest congratulations on a circumstance which must justly afford you peculiar pleasure.

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7 The inconvenience of such political meetings while the Courts were sitting was found to be so great, that afterwards an act was very properly passed forbidding the holding of them in the vicinity of Westminster Hall.

"I have the honour to be, my dear Lord, with high esteem, your Lordship's very faithful and obedient servant,

"MOIRA."

"Lord Loughborough, &c. &c. &c." \*

The Chancellor seldom spoke in the House of Lords, and the brilliant reputation he enjoyed as a debater in the House of Commons had much faded. Some imputed this change to a decline of mental or of physical energy, and others to the coolness between him and the Prime Minister. He took a prominent part, however, in the discussion upon the rupture of the negotiation at Paris, in the end of 1796, between Lord Malmesbury and the Directors of the French Republic. Most strenuously had he always resisted the proposals to treat with them. Like his friend, Lord Auckland, he said that "they ought to be put under the sword of the law," and he declared that it was indecent to send an ambassador to address them in the words of Antony to the assassins of Cæsar—

"Let each man render me his bloody hand."

He therefore greatly rejoiced that the country had escaped the perils of a "regicide peace,"—and an address to the Crown being moved on the occasion, he expressed much indignation against the Earl of Guilford's amendment, which threw blame upon the Ministers for the terms they had demanded,

\* The following are letters written by the Duke of Portland to Lord Loughborough respecting the new grant of his peerage:

"Tuesday evening, 6th Oct. 1795.

"My dear Lord,—I have great pleasure in assuring you that I am not aware of any circumstance which should retard the manifestation of the King's sense of your services, and that I shall be very happy in receiving his commands to carry his intentions into effect. I did not receive your letter (though dated on Friday) till yesterday. Had it reached me in its due course I must have disobeyed your orders, for I could not have deferred till Wednesday my thanks for your attention to my assurances of the part I take in an event which must so naturally and so justly contribute to your satisfaction. I am very sincerely,

"My dear Lord,  
Your most faithful and obedient, &c.,  
"PORTLAND."

"Oct. 14, 1795.

"My dear Lord,—After what you have heard from the King upon the subject of your patent, it would be very unnecessary to inform you of the very gracious manner in which he not only assented to but approved of the insertion of Mr. Erskine's name. . . . His wish was, that it should be made in the manner most agreeable to yourself. . . . I was not at the levée, but I was for half an hour in the closet; and have the satisfaction of informing you that I perceived little, if any, of that agitation which was so striking on this day ee'nnight; and this opinion was fully confirmed by Lord Spencer.

"I am, &c.,

"PORTLAND."

—*Ross. MSS.* There are many other letters from the Duke of Portland to Lord Loughborough from 1782 downwards; but, generally speaking, they are jejune, confused, and almost unintelligible.

\* *Ross. MSS.*

and prayed that his Majesty should make fresh overtures to the Republican Government. "Such an amendment," said he, "was never before proposed in an English parliament. Can any gloomy imagination suppose that it will be adopted? What effect would it produce in this country and throughout Europe? The inference would be, that Great Britain is willing to submit to whatever conditions the enemy chooses to impose. It tends to humble the nation before the Executive Directory, and to call upon them to put their feet upon our prostrate necks." He then went over the circumstances of the negotiation, to show the bad faith of the French negotiators,—introduced some important statistics from the Court of Chancery to prove a decrease of bankruptcies,—and an increase of investments for the benefit of the suitors, and asked "whether, after the French had barred and double-bared the door of negotiation against us, and our resources were still unexhausted, the House was prepared to send up this grovelling amendment to the Throne, in preference to declaring, by the address originally moved, that they would not submit to a faithless and arrogant enemy?" The amendment was negatived by a majority of 86 to 8.<sup>b</sup>

It is curious to consider that at this time the advocate of the Government was very imperfectly acquainted with the real merits of his case. It appears, among A.D. 1797. other astounding disclosures in the lately-published Memoirs of Lord Malmesbury, that all the Cabinet, except Pitt, Dundas, and Lord Grenville, were kept in ignorance of that ambassador's most important despatches, and that he was obliged to write one set for the whole Cabinet, and another for the triumvirs. He adds, "the Chancellor, Lord Loughborough, walked home with me from Pitt's;—he not in the whole secret, and, as usual, questioning and apparently sanguine."

Soon afterwards, a crisis arose in which Lord Loughborough displayed the firmness and decision which in times of peril he always brought to the aid of the State. Mr. Pitt, having disregarded several previous warnings, was informed on a Saturday evening, that, from foreign subsidies and unfavourable mercantile operations, such was the low state of bullion and specie at the Bank of England, and so enormously had the market price of gold risen above the Mint price, that they could pay in cash no longer. On Sunday morning the King

was sent for from Windsor, and a council was called, at which he presided. Mr. Pitt proposed an order by his Majesty in Council forbidding the Bank of England to make any farther payments in cash; but grave doubts were entertained how far such an order would be constitutional, as since the Revolution of 1688 there had been no instance of the Executive Government avowedly superseding Acts of Parliament and violating the law, unless where the subsistence of the people was concerned, as in prohibiting the exportation of corn or suspending the duty upon the importation of corn during the recess of Parliament,—whereas Parliament was now sitting, and the proposed order affected innumerable private contracts between man and man. Nevertheless the Chancellor, being appealed to, gave a clear opinion that for the safety of the state the Executive Government should, upon the responsibility of Ministers and in expectation of an indemnity, do any act which the Legislature, if it had the opportunity, would sanction; and that as in this case, if the Executive Government did not interfere, the opinion of Parliament could not be taken till irremediable evils would be brought upon the nation, the Executive Government was bound to interfere,—so that the proposed order, although contrary to law, would be in accordance with the Constitution. The order was accordingly issued, and on Monday morning no payments were made in Threadneedle Street except in bank notes, the directors quieting the public with a statement of their affluence and their readiness to continue all their dealings as usual,—substituting paper for gold. The same day a message from the King was brought down to both Houses, announcing what had been done, and calling for the advice of Parliament. Lord Loughborough's doctrine I hold to be sound, and he could not be answerable for the necessity which required the order, nor for its consequences. He was guilty of a little deception, however, when the matter came to be discussed in the House of Lords, in saying that "it had never entered the contemplation of Ministers to substitute paper for gold by any forcible means, and that they had never thought it would be just or prudent to make bank notes a legal tender."<sup>c</sup> Bank notes were not technically made a legal tender, but if there had been a tender in bank notes, the person of the debtor was protected from legal process; and, till the resumption of cash payments in the year 1819, a paper currency was practically

<sup>c</sup> 32 Parl. Hist. 1568.



established in the country — by which joint operations hundreds of thousands of individuals were ruined, and hundreds of millions were added to the national debt.

Lord Loughborough deserves credit for the prudence he displayed during the alarming mutiny in the fleet. He found that the seamen had real grievances to complain of, and he strongly supported the policy of concession. When the bill for increasing their pay was pending in the House of Lords, and was likely to be obstructed by long speeches, he said boldly, "Those who would enter into discussion at the present moment partake of the criminality of the mutineers. I entreat your Lordships to consider that the delay occasioned by agitating topics which may as well be postponed to a future day, may put in peril the lives of the best and bravest men in the country. This is like stopping, when a conflagration is blazing, to inquire how it originated, instead of employing the engines to extinguish it. I ask a flag of truce for one night. Let the bill be passed forthwith, and sent to Portsmouth, and the country may be saved." The bill was passed forthwith, *nemine dissentiente*.<sup>d</sup>

The Chancellor still highly disapproved of the manner in which the war was conducted, and from time to time wrote long letters to Mr. Dundas, who was considered the war minister, as to the inexpediency of surrendering Toulon, and neglecting all concert in acting with the allies whom we subsidised. One of these he concludes by observing, "The *desideratum* is a person who, like the Duke of Marlborough in the time of the Grand Alliance, could settle at the Hague, Berlin, and Vienna, and all the lesser Courts (having an inspection also over the negotiations with St. Petersburg), the plan of a campaign. What substitute can be found for an agency of equal force, I certainly cannot tell; but without it I fear much our efforts will be very defective."<sup>e</sup>

The Duke of Bedford having moved an address to his Majesty, to dismiss his Ministers for misconduct, Lord Loughborough spoke, but did not attempt any general defence of Mr. Pitt's war policy. He confined himself to reprobating the measure of parliamentary reform, and particularly the disfranchisement of the rotten boroughs, which had been recommended as the means of reconciling the people to the Constitution. "The noble Duke's plan," said he, "is wilder than universal suffrage; he would despoil corporations of their

<sup>d</sup> 33 Parl. Hist. 491.

<sup>e</sup> Ross. MSS.

privileges, and assist the House of Commons in uncreating their creators; he would overwhelm freeholders by 'pot-boilers;' he would cut up by the roots whatever belongs to franchise, property, or privilege, and introduce in its stead the principle of an agrarian law. The noble Duke says, 'the existing voters will not be injured by an extension of the franchise, because they will still be allowed to vote;' but will he be contented to see hundreds of 'pot-boilers' called in to share his estate, if he is still allowed rations for the subsistence of himself and his family? I would advise the noble Duke to remember, that in France, those who were first in revolutionising the country were the earliest victims of the fatal doctrines which they propagated." On this occasion the Opposition mustered 12 to 91.<sup>§</sup>

So greatly was the Chancellor elated by the prostrate condition of his opponents, that he treated them at times with contumely,—designating a motion of Lord Guilford as "the thing which he held in his hand, too contemptible to put;" and lamenting a speech, in which the eccentric Earl Stanhope had called himself "Citizen Stanhope," as "an awful visitation of God."

However, he appeared to great advantage in returning thanks to the winner of the battle of Camperdown, whom he thus addressed:—

"Lord Viscount Duncan,—I am commanded by the Lords to give your Lordship the thanks of this House for your able and gallant conduct in the brilliant and decisive victory obtained over the Dutch fleet on the 11th day of October last; as well as for the zeal, courage, and perseverance which you have uniformly manifested during the arduous period in which you have commanded his Majesty's fleet in the North Sea.

"At the same time that this vote passed unanimously, their Lordships were pleased to order, that all the Peers should be summoned to attend the House on the occasion: a distinction unprecedented, but called for by the general admiration your conduct has inspired, and strongly expressive of that peculiar satisfaction which the Peers must feel upon your Lordship's promotion to a distinguished seat in this House.

"Splendid in all its circumstances as the victory obtained by his Majesty's fleet under your command has been, important as it must prove in its consequences to the security of all his Majesty's dominions,

<sup>†</sup> 33 Parl. Hist. 764.

<sup>§</sup> If one hackney coach would not have contained all the Whig Peers at this time, an

omnibus would have been quite sufficient.—

See Mr. Byng's account of the House of Commons, *antè*, Vol. VII., p. 276.

and, under the Divine blessing, to the favourable issue of the arduous contest in which they are engaged ; the magnitude and lustre of these considerations have not so occupied the observation of the Lords as to make them unmindful of the constant vigilance with which your Lordship had, in the whole course of your command for three successive seasons, watched and frustrated every design of the enemy ; nor the manly fortitude with which you had sustained the temporary defection of the greater part of your force ; nor, above all, that undaunted resolution with which, at so momentous a crisis, you proceeded to check and to control the presumptuous hopes of the enemy.

“These are merits in which fortune can claim no share ; they spring from that energy of mind and that ardent love of your country which have directed your own conduct, and animated the officers and men under your command, to those exertions which are entitled to every testimony of public gratitude and applause.”<sup>b</sup>

In the spring of this year the Chancellor had a very serious illness, which caused much anxiety to his friends. Soon after his recovery he received the following letter from Mr. Burke, which has a melancholy interest, as the last which was written to him by this great man, who had been so long, by turns, his foe and his friend :—

‘ Bath, 1st May, 1797.

“ MY DEAR LORD,

“Though not much concerned, nor likely to be long concerned, about any thing on this side the grave, I felt a sincere pleasure on your Lordship’s recovery ; and do trust and hope, from the energy of your Lordship’s character, that you will act your part in a total change of the plan of passive defence, so ruinous in point of charge, and not only so inefficient, but in every point of view so highly dangerous to all things except our enemies abroad and at home. I know it will require the greatest resolution and perseverance to make the necessary change in this unfortunate plan ; but if it be not done you are all ruined, and all of us along with you. Pardon this friendly liberty at the time when others take so many liberties that are far from friendly. This, though infinitely of greater importance, is not the subject on which I wish just now to trouble your Lordship. It is relative to a little affair that I mentioned to you about five months ago, and which it is no wonder your serious illness and important occupations have put out of your head. I mean that of two worthy persons that are as nearly as possible at the point of dying from actual famine : the first is that character, not so respectable for his rank and family, which are amongst the highest, as for perfect piety and unbounded charity, the Archbishop of Paris : the other is not inferior to him, in my humble opinion, in virtue and religion, nor in charity neither, according to his more limited means, which, to my knowledge, he particularly extended to distressed English

residents at Amiens. The revenue of his bishopric was 2400*l.* sterling a year, of which he received but 400*l.* to support himself and his dignity in the Church, and he contributed every penny of the rest in charity. He is now in Germany, in a state of the greatest indigence. His name is Machault, son of Machault formerly Minister of the Marine, and who, I believe, is now living in an extreme old age, and thoroughly pillaged by this glorious revolution. Now I ask nothing but that these two should be each put on such allowance as French bishops here receive, and that it should be a quarter antedated for their present necessities. If your Lordship will permit my friend Dr. King, whose hand supplies the infirmity of mine, to manage this affair, he will do it to your Lordship's and Mr. Pitt's satisfaction, and with all possible attention to the fallen dignity of the eminent persons to be relieved; and it is for this reason that I wish the affair to be managed by him only.

"You will not think a solicitation so worthy of humanity to be unworthy of you. God direct you at this arduous moment. Believe me, my dear Lord, with sincere respect and affection, your friend of thirty-five years' standing, and always your most obedient and obliged humble servant,

"EDM. BURKE."<sup>1</sup>

Lord Loughborough immediately represented the cases to the Government, and in the mean time, with his usual liberality, ministered to the necessities of these meritorious individuals from his own funds.

In the year 1797 much of his time was occupied with the differences between the Prince and Princess of Wales; and he carried on a long negotiation on the subject with Lord Thurlow, Lord Cholmondeley, and Lord Moira. A sentence in a letter to him from the last-mentioned nobleman may convey a notion of the task imposed upon them: "I am persuaded the Princess is flattered with the prospect of living apart from the Prince, and having the free disposal of a large income. She thence, evidently to me, wishes to avoid reconciliation, if she can do it without betraying her view. The Prince, on his part, would give his right hand for a decent excuse to force matters to a separation. Judge of the toil of endeavouring to bring two persons together with such sentiments. It must be tried, however." I have before me a lengthened correspondence between the negotiators;<sup>k</sup> but the subject is not at all instructive, and its interest has passed away.

Lord Loughborough had about the same time a difficult negotiation to conduct between Prince Edward, about to be

<sup>1</sup> Ross. MSS.

<sup>k</sup> *Ib.*

created Duke of Kent, and Mr. Pitt, who seems to have been disposed to treat him with great rigour in the formation of his establishment. His Royal Highness thus acknowledges the good offices of the Chancellor :—

“St. James’s Street, 13th Feb. 1799.

“MY LORD,

“I had intended doing myself the pleasure of calling upon your Lordship this morning to thank you for the very friendly and polite manner in which you were so good as to speak of me to the Duke of Clarence, as also for the extreme readiness you showed in undertaking to speak to Mr. Pitt on some subjects relative to myself, which I understand from my brother he mentioned to you.”

[His Royal Highness then enters very minutely into all his affairs, and thus very gracefully concludes:]

“Having now laid all these matters candidly before your Lordship in the manner I feel them, I have only to solicit the continuance of your good offices and friendship, so far as you may think I have a right to those comforts and indulgences which I am solicitous to obtain. I trust my conduct throughout life will never disgrace the good opinion you have so kindly formed of me, and that you will never have reason to repent having befriended him who has the honour to subscribe himself, with sentiments of the highest regard,

“My Lord,

“Your Lordship’s most devoted and

“obedient humble servant;

“EDWARD.”<sup>m</sup>

Our Lord Chancellor now received a distressing alarm by the announcement of a publication which was to treat of rather a tender subject—his coalition with Mr. Pitt. Dr. French Lawrence, to whom all Mr. Burke’s papers were bequeathed, wrote to him to say he was about to print a letter from Mr. Burke to Lord Fitzwilliam, giving an account of the manner in which the “alarmists” had offered to support the Government, and of a dinner at Lord Loughborough’s in November, 1792, where they had assembled and laid down their plan of operations—inclosing a copy of the passages of the letter in which Lord Loughborough was mentioned, and asking if he had any objection to it. I have not found his remonstrance at full length, but the tenour of it may be

<sup>m</sup> This letter and the others from his Royal Highness to Lord Loughborough are in the most beautiful handwriting I ever

saw, hearing a striking resemblance to that of his illustrious daughter, who now fills the throne.

gathered from the very interesting reply of Dr. Lawrence, which lies before me:—

“On the letter to Lord Fitzwilliam, of which I sent an extract, your Lordship has said much more than would have been sufficient to satisfy my mind. You and Mr. Anstruther, it seems, differ very essentially from Mr. Burke in your impression of the conversation that passed at your house. That was enough immediately to determine me against the publication of the letter. . . . . Permit me, however, my dear Lord, to trespass a little on your patience with regard to the principles which on this occasion you have laid down. They interest me deeply. They relate to the conscientious discharge of the sacred trust which I have undertaken—not the care of Mr. Burke’s reputation (he will leave to posterity to enjoy that most glorious inheritance)—but the task of holding out to imitation the purest example of all public virtue. Ill would that great end be promoted if I should do any thing even of dubious morality. It has always been my endeavour, to the best of my abilities, such as God has given me, to understand my moral duties. I have meditated still more upon them since I became a public man to the extent that I am such, and more so I do not wish to be in the present awful crisis of the country, in which, if even the grand impending danger should pass away, I see almost every symptom that has usually forerun the downfall of great states, under free constitutions. . . . . In one sense, I accord with the rule which your Lordship has laid down, ‘That nothing should be given to the public by representatives which it would have been improper for the person they represent to have committed to the press.’ If it be meant *morally* improper, I see no exception to the rule. But there are a thousand little personal considerations of delicacy, and even of prudence, which naturally end with the life of the man. Your Lordship thinks it contrary to morality, that ‘any letters should appear which relate to intimate and familiar conversations, where, in mutual confidence, the parties concerned express to each other their sentiments and opinions on men and things.’ This, my dear Lord, is a nice question, as I view it, and on the very confines of opposite duties. If it were to be taken in the full latitude which you seem to give it, I am afraid it would go to the annihilation of all history worth reading. I have never seen or heard the morality of Atticus impeached for publishing the valuable series of Cicero’s letters, which could only have come directly or indirectly from him, and which, there is reason to think, must have been published while many of the persons very freely mentioned in them were still alive. Posterity has uniformly applauded the act. Perhaps those letters, for real instruction, are worth all ancient history put together. On the other hand, if we were too literally, and without any limitation, to apply to all what Mr. Burke, in one of his letters, nobly says of himself, ‘that he had no secrets with regard to the public,’ much mischief would undoubtedly ensue to private society. . . . . Long and formal letters, in the nature of protests, containing deliberate

opinions, or relating the substance of consultations, had among public men for the systematic guidance of their public conduct—it should seem to me, under the correction of your Lordship's better judgment, have nothing in their own nature which should make it improper to give them to the public, *if the situation of things to which they refer has actually passed away*. . . . The letters of which Mr. Burke kept copies, and which he spared when he burned a great number of papers, I always understood him to have preserved as a sort of historical documents. . . . Mr. Burke was of opinion, that nothing was done at the meeting in question, that is, nothing towards bringing any number of his and your friends to act together with decision on those good principles which they actually then all held in common. Your Lordship draws a different inference, and considers it as supported by the sequel. I confess, my dear Lord, that I have ever regarded the sequel as making for him. I have ever understood (you will be so good to forgive and instruct me better if I have been wrong) that your Lordship's principal motive for consenting to take office alone, after you had twice refused it, was the impossibility of finding any steady support in doing your duty to your country out of power. My approbation, I am sensible, is of little value; but on these grounds it is that I have ever approved your acceptance of the Seals, under all the circumstances of that day, as a virtuous and manly act."

Dr. Lawrence, having thus abandoned his preliminary publication, employed himself steadily in writing a regular "Life of Burke," in which he intended to have introduced the correspondence fit to be published of that illustrious statesman, orator, and philosopher—but, to the unspeakable loss of English literature, his career was prematurely cut short before he had made much progress in this grand design.

In the ensuing year Lord Loughborough was involved in a very disagreeable controversy between the King and the Prince of Wales respecting the profits of the Duchy of Cornwall during his Royal Highness's minority;—the former contending that they belonged to him as guardian in chivalry, without account, or at any rate that he had a right to set off against them the expense of the heir's education and maintenance, which would be more than the amount demanded;—the latter, that he was entitled to the whole without deduction—his education and maintenance being provided for by the public. The following letters were written by the Prince to the Chancellor on this subject:—

"MY LORD,

"Your Lordship will excuse me for troubling you again upon the subject of the Petition of Right I presented to you on the 14th day of

February, 1796. The petition not having been delivered to his Majesty, and your Lordship having expressed some doubts whether it fell within your Lordship's province to present Petitions of Right to his Majesty, I find myself under the necessity of requesting your Lordship to be so good as to come to a determination on the subject, and if it shall be finally your Lordship's opinion that such petitions ought not to be presented by the Lord Chancellor, that you will please to communicate that opinion to me, and to return me the petition, that I may be enabled to present it in such manner as shall appear most proper to those whom I must consult in the business.

"I am, my Lord,

"Very sincerely yours,

"Critchill, April 19th, 1799."

"GEORGE P.

"MY DEAR LORD,

"I have been this morning honoured by a letter from the King, accompanied by one from your Lordship; the King refers me to you for intelligence respecting his pleasure upon the present occasion. I trust you will not, however, give yourself the trouble of coming over here, as I shall be in town again in a very few days, when I will make it my business to immediately apprise you, my good Lord, of my arrival.

"I am, with great truth,

"Very sincerely yours,

"Harbledown, near Canterbury, Aug. 30th, 1799."

"GEORGE P.

"MY DEAR LORD,

"I am most extremely concerned that you should have had the trouble of travelling so far, and after all not to have found me at home. I hope you are well persuaded that, could I have expected you, I should have taken care to have been in the way. I have been dining at Sir Charles Grey's, and am only this instant returned, when I found your note, and I shall be most happy to receive you between ten and eleven to-morrow. This day's post carried a letter from me to you, acquainting you that I had been honoured by a letter from the King, and referring me to you for his intentions and pleasure in the present business, but at the same time I requested you not to hurry yourself, as I should be again in town in the course of a day or two, when I would instantly apprise you of my arrival.

"I am, my dear Lord, ever, with great truth,

"Very sincerely yours,

"Harbledown, Friday night, 11 o'clock P.M., Aug. 30th, 1799."

"GEORGE P.

"MY DEAR LORD,

"I arrived late last night here, and am very desirous, now that I have paid my respects to their Majesties, to have half an hour's conversation



with you. Will you do me the favour of calling upon me a little before two o'clock this day, or shall I call upon you? I assure you it is a matter of no choice to me; but if you are in the least apprehensive of the badness of the weather, I shall, with the greatest readiness and pleasure, wait upon you.

"I am, my dear Lord,

"Very sincerely yours,

"GEORGE P.

"Weymouth, Sept. 17th, 1799,  
half-past 12 P.M."<sup>a</sup>

The controversy was never brought to a conclusion, and I am not aware that Lord Loughborough gave any opinion upon it beyond the wary saying recorded in the following extract of a letter to him from Lord Thurlow:—"The Prince expressed himself much gratified with your Lordship's opinion of him, *'That he could have no wish upon a question of law, but to know what the law is.'*"<sup>b</sup>

The Chancellor was likewise much occupied this year with negotiations in the royal family, arising out of the marriage of the Duke of Sussex with Lady Augusta Murray, and his papers contain an immense mass of correspondence on the subject. In justice to the Prince of Wales, of whom I cannot always speak so favourably, I am bound to say that he behaved on this occasion with kindness and generosity. I copy one short letter, which is creditable to both brothers.

"Berlin, Sept. 16th, 1799.

"MY DEAR PRINCE OF WALES,

"Having now fixed the day for Augusta's departure, I take the earliest opportunity to inform you of it. She will set out from here on the 19th of the month. I flatter myself, my dear Prince of Wales, you will protect us. Our child will be here to-morrow, and is to return back with Augusta. Being excessively unwell, I cannot at present write a long letter. Wherefore I conclude with subscribing myself,

"My dear Prince of Wales,

"Your affectionate and grateful brother,

"AUGUSTUS FREDERICK."<sup>c</sup>

I am now to relate an affair which reflects much honour on Lord Loughborough, and (I am grieved to say) very little on a learned body to which I belong. Sir James Mackintosh, struck with the defective state of legal education in England, and particularly with the gross ignorance displayed by his

<sup>a</sup> Ross. MSS.

<sup>b</sup> Ibid.

<sup>c</sup> Ibid.

brethren at the Bar of the principles of general jurisprudence, proposed to give a course of lectures on "the Law of Nature and Nations," and asked the Benchers of Lincoln's Inn that he might have the use of their hall as a lecture-room. These venerable men, who had reached their present dignity without being required to do more than to eat a certain number of dinners in public, and whose principal occupation now was to order, for their own table, all the choice delicacies of the season, under the name of "exceedings,"<sup>q</sup> were greatly shocked by this proposed innovation, and, being almost all blindly furious Antijacobins, trembled at the idea of the minds of the rising generation being poisoned by the author of the "Vindiciæ Gallicæ." While they were deliberating, there appeared, as a *prospectus*, the Preliminary Discourse, of which Thomas Campbell truly and beautifully said, "If Mackintosh had published nothing else than this 'Discourse,' he would have left a perfect monument of his intellectual strength and symmetry; and even supposing that that essay had been recovered only imperfect and mutilated—if but a score of its consecutive sentences could be shown, they would bear a testimony to his genius as decided as the bust of Theseus bears to Grecian art among the Elgin marbles." But if the Benchers of Lincoln's Inn read it through, they remained untouched even by the concluding sentence: "To discover one new link of that eternal chain by which the Author of the universe has bound together the happiness and the duty of his creatures, and indissolubly fastened their interests to each other, would fill my heart with more pleasure than all the fame with which the most ingenious paradox ever crowned the most ingenious sophist." The use of Lincoln's Inn Hall as the place where the eternal chain, with its new link, might be exhibited, was still refused.<sup>r</sup>

Lord Loughborough, ashamed of his order, deemed it his

<sup>q</sup> At the Benchers' table there is supposed to be the same dinner as at the Students', and the same "commons" are actually put before them, but with the addition of any other dishes that any benchers may fancy. A lean student having complained to a fat old benchers of the starved condition of those who dined in the lower part of the hall, received this answer:—"I assure you, sir, we all fare alike: we have the same commons with yourselves." The student replying,—  
"I can only say, we see pass by us very sa-

vonry dishes on their way to your table, of which we enjoy nothing but the smell,"—"Oh!" exclaimed the benchers, "I suppose you mean the 'exceedings,' but of these the law takes no cognizance."

<sup>r</sup> An eminent King's counsel being asked "whether he did not admire Mackintosh's character of Grotius?"—certainly one of the finest pieces of composition in our language,—answered by another question, "Who was Grotius?"

duty to interfere. He had no direct jurisdiction on the subject, but, as head of the law, and himself a member of the Society, he thought that his advice would be listened to. In a letter circulated among the Benchers, after highly praising the "Preliminary Discourse," he said, "A lecture in the spirit of that Discourse would at all times be of great utility and of much ornament to our profession. In times like the present, it is capable of rendering great service to the cause of religion, morality, and civil policy." He then went on, in soothing and respectful terms, to express a hope that the resolution against the author, which had probably been adopted without a due knowledge of his intention, might be reconsidered.\*

This appeal was successful; and the lectures being given, it was hoped that the name of Mackintosh would be connected with a new æra in the history of juridical study in England. "The novelty of the undertaking, the acknowledged abilities of the author, and his early fame acquired by the powerful support of opinions which it was known that the course of public events had induced him to modify, threw an interest over the execution of the design, that daily filled Lincoln's Inn Hall with an auditory such as never before was seen on a similar occasion. All classes were there represented;—lawyers, members of parliament, men of letters, and country gentlemen, crowded to hear him."<sup>†</sup>

Lord Loughborough expressed deep regret that the discharge of his numerous public duties did not permit him to be of the number of the listeners, but he had full accounts brought to him of the lectures, and he was loud in their praise.

Although the Chancellor had been some time accustomed to mix little in the debates in the House of Lords, when the income tax was brought forward with a view to raise a large portion of the supplies within the year, he made a speech in support of it,—chiefly remarkable for showing with what admiration Mr. Pitt's delusive scheme for paying off the national debt was still regarded. "It ought to be recollected," said he, "that the present Chancellor of the Ex-

\* Mr. Pitt, always liberally inclined, at the same time wrote a private letter to Mackintosh, in which he said,—"I cannot refuse myself the satisfaction of assuring you, that the plan you have marked out appears to me to promise more useful instruction and just reasoning on the principles of government

than I have ever met with in any treatise on that subject."

† Life of Mackintosh, by his Son, vol. i. 107. Mackintosh delivered two courses of lectures; but when he withdrew, the plan of reforming legal education was abandoned, and "we have still the sea to drink."

chequer, who has proposed this bill, is the very person who proposed and effectually supported the plan of annually setting aside a portion of the supplies to be applied in reduction of the national debt—a plan from which advantages so important have been derived, that the country can never forget the gratitude it owes to the man whose genius prompted him to carry into execution a design so noble and so useful.”<sup>u</sup> Lord Grenville cheered these sentiments, — but he afterwards demonstrated that the national debt was much greater, and much less likely to be redeemed, than if the sinking fund had never been established.

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## CHAPTER CLXXIV.

CONTINUATION OF THE LIFE OF LORD LOUGHBOROUGH TILL HE RESIGNED  
THE GREAT SEAL.

NOTWITHSTANDING a display of outward courtesy, there was  
A.D. 1800. less and less cordiality between the Chancellor and the Prime Minister. Loughborough, a great observer of public decorum, would not, like his predecessor, leave the woolsack to speak against a Government bill; but, feeling that the confidence to which he thought himself entitled was withdrawn from him, he generally satisfied himself with putting the question as Speaker, and on a division saying to the tellers,—“content” or “not content,”<sup>\*</sup> never giving an opposition vote. By degrees he began privately to speculate—not upon a change of the Administration, but of its Chief. The Whig Opposition had been nearly annihilated, and Mr. Pitt had overwhelming majorities in both Houses to support whatever measures he brought forward, and to protect him from censure, whatever faults he might commit. But his situation had become very embarrassing. Elated with the success which had attended the arms of the Allies on the Continent while Napoleon was absent in Egypt and Syria, he had

<sup>u</sup> 34 Parl. Hist. 207.

<sup>\*</sup> According to the usages of the Lords, the “contents” always go below the bar, the non-contents remaining in the body of the

House; but the Lord Chancellor is allowed to announce his vote sitting on the woolsack.

refused to treat with him when the successful General had become First Consul—insolently telling him to abdicate his power and to restore the Bourbons. Not long after, he received intelligence of the battle of Marengo,—and, as in the last scene of a tragedy, messenger after messenger announced some new calamity, till at last the great Powers of Europe having succumbed, England had no Allies except three feeble States, which required her aid, instead of adding to her means of resistance,—Naples, Portugal, and the Ottoman Porte. Pitt's proud spirit could not brook the notion of proposing humiliating terms of peace to him whom he had insulted; yet he himself was conscious, and those about him began to whisper, that an attempt at accommodation was necessary, and that the nation could only be induced vigorously to carry on the war by finding that peace was unattainable.

The situation of Ireland gave fresh anxiety to the Minister, particularly from his knowledge that the true cure for the evils of that country was most odious to the prejudiced and obstinate King. A dangerous rebellion followed the sudden recall of Lord Fitzwilliam, and the disappointment of the hopes which he had excited. When this had been suppressed, all wise men saw that some new system for governing Ireland must be adopted, or that the empire must be dismembered. Two independent co-ordinate parliaments, upon the footing established in 1782, could not go on long without a fatal collision; and the Catholic body in Ireland, comprehending about seven-eighths of the population, and growing daily in wealth and intelligence, could not quietly submit to the penalties and disabilities by which they were aggrieved and degraded. Under these circumstances Mr. Pitt formed the splendid project of a Legislative Union between the two islands, and of forcing the King to consent to Catholic emancipation, by producing a state of things in which a constitutional sovereign would find it necessary to sacrifice his individual wishes, and to adopt the wholesome advice of his Ministers. Happy would it have been for us if this great man had fully succeeded in his intentions!

After many difficulties the Irish Union was carried; but all the corruption resorted to would have been unavailing, if there had not been a distinct intimation to the Catholics, that—although they must be excluded from all political privileges while Ireland remained a separate kingdom—under a united Legislature they safely might be, and they certainly should

be, treated in all respects on an equal footing with their Protestant fellow-subjects. Mr. Adolphus, well informed as to what was passing at Court during this period, says (and I believe him) that "the assurance was given to the Irish Catholics without the King's privity, and with a full knowledge of his sentiments upon the subject, in the hope that his Majesty, after the Union had taken place, seeing that Catholic emancipation was indispensable, would agree, however reluctantly, to that measure."<sup>†</sup> Lord Grenville, Lord Spencer, and Mr. Dundas<sup>‡</sup> were in the secret; but Lord Loughborough (I presume from being notoriously a "King's friend") was not informed of the liberal policy by which the Union was to be followed up and made effectual;—and the apprehension that he might betray them increased the estrangement between him and the more influential section of the Cabinet.

All went on with apparent smoothness till the Union had been carried,—so far the King and all his Ministers concurring. When the bill was in the House of Lords, Lord Loughborough heartily lent his aid in defending it. The clause allowing Irish peers to sit in the House of Commons, on renouncing the privileges of the peerage, being strongly censured by Lord Mulgrave as derogatory to the dignity of their order, he said,—

"I am a good deal surprised at what has fallen from the noble Lord, whose whole discourse seemed better suited to an assembly of French or German *noblesse* than to a British House of Peers. Did any of your Lordships ever estimate so highly your nobility of blood as to think it vitiated by your mixing as legislators with the gentry of England? The noble Lord says, 'it would be degrading to see an Irish peer of the first rank come to your bar decorated with ribbons, while the youngest English baron may be sitting among your Lordships.' It has fallen to my lot, when junior baron of this House, to walk down to the bar to receive messages from the Commons delivered by the eldest son of the premier Duke of England, and by Irish peers of higher rank than myself—and I never felt any embarrassment in such encounters. Why may not Irish peers sit in the House of Commons after the Union as they have hitherto done,—finding themselves by the side of the eldest sons of the highest English nobility, and training themselves in a popular

<sup>†</sup> Hist. vol. vi.

<sup>‡</sup> This gentleman was particularly blamed for the part he took, being so well acquainted with the King's private sentiments. In a conversation some time previously, the King having stated the coronation oath as an insuperable objection to any farther concession

to the Catholics, Harry had tried to argue the King into the belief that this was binding upon him in his executive, not in his legislative, capacity; but his Majesty cut him short by exclaiming, "No Scotch metaphysics, Mr. Dundas; none of your Scotch metaphysics!"

assembly, to be useful here if they should be chosen representative peers, or if they should be added to the peerage of the United Kingdom?"<sup>a</sup>

The Bill at last received the royal assent; and the King, at the conclusion of the session (probably not being aware of the full import of the speech made for him), was induced to say, "This great measure, on which my wishes have been long earnestly bent, I shall ever consider as the happiest event of my reign, *being persuaded that nothing could so effectually contribute to extend to my Irish subjects the full participation of the blessings derived from the British Constitution.*"<sup>b</sup>

On the 1st of January, 1801, the day on which the Incorporate Union between Great Britain and Ireland took effect, Lord Loughborough attended at a Grand Council held at St. James's, bearing the seal that for some purposes had become the seal of the whole United Kingdom. A.D. 1801. The ceremony of his resigning it and receiving it back was considered unnecessary; but the Heir Apparent, the Dukes of York, Clarence, and Kent, all the King's Ministers, and the most eminent dignitaries of the Church and Law attending, they were sworn in as Imperial Privy Councillors, and orders were issued for making the necessary alterations in the style of the Sovereign, the national arms,<sup>c</sup> and the Book of Common Prayer.

A great crisis was at hand. Mr. Pitt's Administration, which had lasted near twenty years, and seemed stronger than ever, was speedily to be dissolved.—From the new materials with which I have been furnished, I am enabled to give a much fuller and more authentic statement of the circumstances which led to this event, than has yet been laid before the public.

How far the suspicion is well founded, that Mr. Pitt was desirous of a plausible pretext for surrendering office, so that another Minister might conclude a peace with France, must for ever remain a mystery. His conduct has in some degree the aspect of his having been actuated by such a motive: he

<sup>a</sup> 35 Parl. Hist. 160.

<sup>b</sup> Ib. 494.

<sup>c</sup> Lord Loughborough was much abused for the order by which the lilies were struck out of the King's shield, and he ceased to be called "King of France." We now read with amazement of the keen objections made to the dropping of these fooleries. George III. was "rightful and lawful King of these

realms," by Act of Parliament and the will of the nation; but he would have found it difficult to make himself out heir to Edward III., even supposing that King to have had a title (which he had not) to the French crown. There was no loss of dignity in voluntarily waiving what might justly be offensive to our neighbours.

probably felt deeply, that without an interval of repose the contest could not be carried on, and that there were peculiar difficulties in his way, were *he* now to attempt to open a negotiation with the First Consul. But if he did precipitate his resignation with such a view, I believe that he never explained his plan to any human being, and that he hardly owned it to himself. According to all the most private and confidential documents which I have seen, connected with the subject, he was proceeding earnestly and sincerely to emancipate the Irish Roman Catholics,—when, against his will, he quarrelled with the King, and was dismissed from office. This result was mainly brought about by the intrigues of Lord Loughborough.

To lay open these properly, I must go back to the year 1795, when Earl Fitzwilliam was sent as Lord Lieutenant to Ireland, and a bill was proposed in the Irish Parliament to relieve Roman Catholics from their civil disabilities. The King, entertaining conscientious doubts how far his consent to such a measure would be consistent with his coronation oath, consulted Lord Kenyon and Sir John Scott, the Attorney-General, upon the point, and they then advised him that this oath was not binding upon him so as to prevent him from consenting, in his legislative capacity, to a relaxation of penal laws in favour of any class of his subjects; but Lord Loughborough, by whom it was not supposed that such scruples could have been countenanced (for the purpose, I fear, of gaining favour with the King by flattering his prejudices), wrote the following paper, which in the handwriting of George III. is thus entitled:—

“Thoughts on the Emancipation of the Roman Catholics of Ireland, and Dangers arising from granting them. March 5th, 1795.”

“As<sup>d</sup> the object petitioned for by the Roman Catholics of Ireland is the total abolition of all distinctions in religion, it requires consideration how far that object could be effected consistently with the Constitution.

“The only laws which now affect Papists in Ireland are the Acts of Supremacy and Uniformity, the Test Act, and the Bill of Rights. The question deserves serious investigation how far the King can give his assent to a repeal of any one of these Acts without a breach of his Coronation Oath and the Articles of Union with Scotland. The construction put upon the Coronation Oath by Parliament at the Revolution seems strongly marked in the Journals of the House of Commons. A clause

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<sup>d</sup> The rest is in the handwriting of Lord Loughborough himself.



was proposed by way of rider to the bill establishing the Coronation Oath, declaring that nothing contained in it should be construed to bind down the King and Queen, their heirs and successors, not to give the royal assent to any bill for qualifying the Act of Uniformity, so far as to render it palatable to Protestant Dissenters; and the clause was negatived upon a division. This leads to the implication that the Coronation Oath was understood at the Revolution to bind the Crown not to assent to a repeal of any of the existing laws at the Revolution, or which were then enacted for the maintenance and defence of the Protestant religion as by law established.\* If the oath was understood to bind the Crown not to assent to a repeal of the Act of Uniformity in favour of Protestant Dissenters, it would seem to bind the Crown full as strongly not to assent to the repeal of the Act of Supremacy, or the Test Act, in favour of Papists. Another question arises by the provisions of the Act limiting the succession to the Crown, by which a forfeiture of the Crown is expressly enacted, if the King upon the throne should hold communion with, or be reconciled to, the Church of Rome. May or may not a repeal of the Act of Supremacy, and the establishing the Popish religion in any of the hereditary dominions, be invidiously construed as amounting to a reconciliation with the Church of Rome? The Chancellor of England would, perhaps, incur some risk in affixing the English Seal to a bill for giving the Pope a concurrent ecclesiastical jurisdiction with the King.

"It is likewise apprehended, that by the Articles of Union with Scotland it is declared to be an essential and fundamental article that the King of Great Britain shall maintain the Church of England as by law established, in England, Ireland, and Berwick upon Tweed.

"The bargain made by Ireland in 1782 by Yelverton's Act should be referred to, and the question will occur, whether a repeal of any of the English statutes adopted by this Act in this country would not be a direct violation of the compact then made by the Parliament of Ireland with Great Britain.

"These queries are humbly submitted with a view only to a due investigation of so important a measure.

"March 5, 1795."

George III., fortified by such authority, drew up the following observations, which he sent to Mr. Pitt:—

"Having yesterday, after the drawing-room, seen the Duke of Portland, who mentioned the receipt of letters from the Lord Lieutenant of Ireland, which to my greatest astonishment propose the total change of the principles of government which have been followed by every Administration in that kingdom since the abdication of King James II., and

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\* The clause may have been very properly rejected as unnecessary, and raising a doubt as to the power of the Crown to give the royal assent to other acts in *pari materia*.

consequently overturning the fabrick that the wisdom of our forefathers esteemed necessary, and which the laws of this country have directed; and this after no longer stay than three weeks in Ireland, venturing to condemn the labours of ages; and wants an immediate adoption of ideas<sup>f</sup> that every man of property in Ireland, and every friend to the Protestant religion, must feel diametrically contrary to those he has imbibed from his earliest youth.

“Undoubtedly the D. of Portland made this communication to sound my sentiments previous to the Cabinet meeting to be held to-morrow on this weighty subject. I expressed my surprise at the idea of admitting the Roman Catholics to vote in Parliament; but I chose to avoid entering further into the subject, and only heard the substance of the propositions, without giving my sentiments. But the more I reflect on this subject, the more I feel the danger of the proposition, and therefore should not think myself free from blame if I did not put my thoughts on paper, even in the present coarse shape, the moment being so pressing, and not sufficient time to arrange them in a more digested state previous to the D. of Portland’s laying the subject before the Cabinet.

“The above proposal is contrary to the conduct of every European Government, and, I believe, to that of every State on the globe. In the States, the Lutheran, Calvinist, and Roman Catholic religions are universally permitted, yet each respective state has but one church establishment, to which the states of the country and those holding any civil employment must be conformists; court offices and military commissions may be held also by persons of either of the other persuasions, but the number of such is very small. The Dutch provinces admit Lutherans and Roman Catholics in some subsidised regiments; but in civil employments the Calvinists are alone capable of holding them.

“Ireland varies from most other countries by property residing almost entirely in the hands of the Protestants, whilst the lower classes of the people are chiefly Roman Catholics: the change proposed, therefore, must disoblige the greater number to benefit a few,—the inferior orders not being of rank to gain favourably by the change. That they may also be gainers, it is proposed that an army be kept constantly in Ireland, and a kind of yeomanry, which in reality would be Roman Catholic police corps, established, which would keep the Protestant interest under awe.

“It is but fair to confess that the whole of this plan is the strongest justification of the old servants of the Crown in Ireland for having objected to the former indulgences that have been granted, as it is now pretended those have availed nothing, unless this total change of political principles be admitted.

“English Government ought well to consider before it gives any encouragement to a proposition which cannot fail, sooner or later, to separate the two kingdoms, or, by way of establishing a similar line of

conduct in this kingdom, adopt measures to prevent which my family was invited to mount the throne of this kingdom in preference to the House of Savoy.

"One might suppose the authors of this scheme had not viewed the tendency or extent of the question, but are actuated alone by the feverish inclination of humiliating the old friends of English government in Ireland, or from the desire of paying implicit obedience to the heated imagination of Mr. Burke.

"Besides the discontent and charges which must be occasioned by the dereliction of all the principles that have been held as wise by our ancestors, it is impossible to foresee how far it may alienate the minds of this kingdom; for, though I fear religion is but little attended to by persons of rank, and that the word *toleration*, or rather *indifference* to that sacred subject, has been too much admitted by them, yet the bulk of the nation has not been spoiled by foreign travels and manners, and still feels the blessing of having a fixed principle from whence the source of every tie to society and government must trace its origin.

"I cannot conclude without expressing that the subject is beyond the decision of any Cabinet of Ministers—that, could they form an opinion in favour of such a measure, it would be highly dangerous without previous [word illegible] with the leading men of every order in the state, to send any encouragement to the Lord Lieutenant on this subject; and if received with the same suspicion I do, I am certain it would be safer even to change the new Administration in Ireland, if its continuance depends on the success of this proposal, than to prolong its existence on grounds that must sooner or later ruin one if not both kingdoms."<sup>6</sup>

Mr. Pitt yielded,—Earl Fitzwilliam was recalled,—and the Irish rebellion in due time followed. But the King believed he had done his duty, and considered Lord Loughborough's reasoning as a sufficient justification for his following the same course in all time to come.

The Catholic question was not again mentioned till after the Irish Union—with the exception of the assurances given privately by Mr. Pitt to the Irish Catholics, that if this measure were carried, their relief could not be longer withheld.

I must now shift the scene to Weymouth, where, in the

<sup>6</sup> There is a copy of this paper in the Rosslyn MSS., with the following memorandum upon it in the handwriting of George III.:—"Paper drawn up on the Earl Fitzwilliam pressing a further emancipation of the Irish Papists, and transmitted to Mr. Pitt; who, having approved of it then, ought not on the 31st of January to have made a similar proposal, and seemed surprised I would not follow him in changing my opinion.

His ground of *expediency* certainly was futile; and the more, as every Irish Protestant felt the ruin of the measure if adopted. And I, certainly feeling the duty I owe to my coronation oath, could not have given my assent to any bill that had but the shadow of putting Papists and Presbyterians in a state of equality with the Church of England.

"12th April, 1801."

"GEORGE R.

autumn of the year 1800, the Chancellor was in attendance upon the King. Till the end of September they were both kept in ignorance that any measure was in contemplation respecting the civil disabilities of any class of religionists in the empire,—the deliberations, in which all the members of the Cabinet participated, being confined to the suppression of riots at home on account of the high price of provisions, and to the negotiation of a naval armistice which had been proposed by the Government of France. The two following letters on these subjects were written by Mr. Pitt to Lord Loughborough from Downing Street :—

(“Private.)

“Sept. 5th [1800].

“MY DEAR LORD,

“The King will undoubtedly communicate to you the papers which Lord Grenville is now despatching, which contain a reply from Otto to our note on the proposal for an armistice, and the French *projet* for that purpose, as well as the *contre-projet* which we have thought it right to propose as fit to be adopted. The question is certainly a delicate one, as any naval armistice is now, and the benefits (as far as they go) are all on the side of France. But the absolute refusal of such a measure would, as I conceive, clearly produce the immediate renewal of hostilities between France and Austria, and probably drive the latter, after some fresh disaster, or from the apprehension of it, to an immediate separate peace on the worst terms. We should thereby not only lose the benefit of a joint negotiation (at which we have so long been aiming), but should also give up the present opportunity of negotiating for ourselves in a manner much more creditable and satisfactory than would result from any direct and separate overture which we might make at a later period. On the other hand, if the joint negotiation is admitted, its natural course may probably carry us to such a period of the year that it must either terminate in a treaty on terms satisfactory to us and Austria, or be broken off when the season will no longer admit of the French army making any decisive progress in Germany, and when Austria will consequently have the interval till the spring for additional preparation. In addition to these considerations, it seems to me to be of the *utmost* importance, with the men to support both in Parliament and the country, that we should not reject the proposal in any manner which enemies either abroad or at home may make use of against us. For these reasons I am strongly convinced that it is right to show a readiness to agree to the armistice, with such modifications as may prevent the principal mischief to be apprehended from it, and as are in fact conformable to the model (of the armistice with Austria) which France professes to follow, though the substance of their *projet* widely departs from it. In the shape which we have given to the measure, France will be put, in the essential point of supply of naval stores for her ports, on the same footing (as nearly as the nature of the thing will admit) which

she prescribed for the Austrian fortresses blockaded. She will also be restrained from making during the armistice any new disposition of her naval force; and our allies, particularly Portugal, will be secure from annoyance. The season of the year itself (independent of the articles of the convention, as we propose them, and of the right of search which we retain) will render it impossible for them to procure any material supply of naval stores before the end of the year, and will therefore prevent their deriving that advantage which we should have most to apprehend. On the whole, I am persuaded that the inconvenience of the armistice, thus modified, would be much less than that of Austria being driven at the moment either to separate peace or the renewal of hostilities; and that if the modifications are rejected by France, we shall at least have shown that we have done all that in fairness was possible towards general peace, shall stand completely justified to Austria, and shall carry the opinion and spirit of our own country with us in any measures which the continuance of the war on this ground (if such should be the result) may require. I wish W. could have had time to have given notice to yourself and such of our colleagues as are at a distance; but the business has pressed so much to a day as to make it impossible. It will give me great satisfaction if the grounds on which we have acted meet your concurrence. I imagine it will not be long before you return to the neighbourhood of town. If the negotiation takes place, we shall very soon have to settle the instructions for Mr. Grenville. The issue of our transactions with Denmark is very satisfactory and opportune. It may perhaps render the tone of M. Talleyrand less offensive than it is in his last note, and may even incline the Consul to close with our proposal; though on the whole I rather expect that our negotiation will be broken off, and that all we can do is to stand ourselves on good ground.

“Ever, my dear Lord,

“Sincerely yours,

“W. PITT.

“A full power will probably be necessary for concluding the Convention, which Lord Grenville, I believe, will prepare and send tomorrow.”

“Sept. 16th [1800].

“MY DEAR LORD,

“In consequence of the tumultuous proceedings in so many parts of the kingdom, on account of the price of corn, it has occurred to myself; and to as many of our colleagues as are in town, to be very desirable to take some public step on the part of Government, which may at least show that its attention is drawn to the subject, and may possibly have a good effect in pointing out to the magistrates the line of conduct which ought to be pursued. The tendency to riot which appeared yesterday in London (though suppressed without difficulty) seems to furnish an additional reason for such a measure. On these grounds

we have thought it right to prepare the draft of a proclamation, to be submitted to his Majesty ; and if you concur with us in the general opinion, you will, I hope, have the goodness to make such corrections as you think proper in the draft. Mr. Faulkener leaves town to-day, and will reach Weymouth in the course of to-morrow or very early on Friday, for the purpose of attending as Clerk of the Council. I imagine you will find no difficulty in procuring the attendance of a sufficient number of Privy Councillors, and it will probably be most convenient to take the opportunity of fixing the prorogation of Parliament to any day which may be thought proper. Probably the middle of November would be as natural a time as any other, though I hope there will be no occasion for really meeting before the commencement of the Union. It seems doubtful whether there is any necessity for prolonging the period for the free importation of grain, as the prices will, of course, keep the ports open for some time. But it may, perhaps, be as well to pass an order for this purpose, receiving the King's permission to make use of it or not, as shall be found expedient.

"After writing thus far I have seen the Duke of Portland, who, I find, means to go himself to Weymouth to attend the Council, which makes it hardly necessary for me to give you the trouble of reading this letter. We shall probably, in the course of the evening, be enabled to send you the answer which has, we know, reached Otto, and probably by this time is transmitted to Lord Grenville.

"Ever, my dear Lord,

"Yours sincerely,

"W. PITT."

The proposed measure was highly disagreeable to the King, who abhorred the idea of entering into any terms with the French regicides ; but Lord Loughborough seems with sincerity to have tried to soothe his indignation, and wrote the following letter upon the subject to the War Minister :—

("Private.)

"Weymouth, Wednesday, Sept. 17th, 1800.

"DEAR DUNDAS,

"You could not have been more surprised than I was with the first communication of a project for a naval armistice. The royal mail had brought a despatch in the morning, with which the King seemed very much satisfied. He gave it to me upon his landing at Portland Island, and, as Windham and I rode with him, told us that it contained the French project for a naval armistice, which appeared, by Lord Grenville's letter, to be thought *totally inadmissible*. There was no opportunity of reading the despatch in the course of the morning, but I had run my eye over it very hastily when the carriages were at the door after dinner, and told Windham that the letter did not seem quite so strong as H. M.

had taken it to be. Upon our return to the Lodge, we learnt that a messenger had arrived: the King called us in, and made me read the despatch, with which he was very much agitated. The letter did not contain much reasoning upon the subject; but stated the unanimous opinion of those present to transmit the counter-project on our part. It seemed to me, at that moment, that a discussion of the measure itself was useless, and that nothing remained but to fix the limits of concession, that it should go no farther. The King's answer was to that effect. When I got home I found a letter from Mr. Pitt, which I ought to have received before I had seen the King, as it contained a much better justification of the measure than Ld. G.'s letter, and made a strong impression not only on my mind, but on Windham's. The consideration which I felt the most strongly was, the influence of the measure at home. There are many men, certainly, who may feel it to be a dangerous concession to admit the possibility of a naval armistice, but amongst those of that opinion you will find a very considerable proportion who are disinclined to all continental engagements. With only such support it would be a very difficult task to maintain the contest in which we are engaged. Another class of men, from whom no good is ever to be derived, consists of those who, from weakness or malevolence, cry out for peace. To guard against the mischief they may do, it is necessary to risk, to a certain degree, the danger of concession in any approach to negotiation. We have hitherto gained by an appearance of a disposition to treat, and I have great faith in Mr. Pitt's knowledge and judgment of the public mind. For the rest, I concur in a very great degree with your reasoning, except that I do not think it quite so easy to detach ourselves entirely from Austria, especially at a moment when, after great efforts, that power is suffering under the adverse fortune of war.

"The King is very much pleased with your dissent, and I showed him your letter to me. It is not impossible that I might have joined in that dissent at Cheltenham; but at Weymouth it was a very different case. After all, however, I have a strong confidence that the answer from Paris will leave no difference of opinion amongst us, though I feel a little uneasy at the delay, which seems to indicate some hesitation on the part of the Consul, whether to accept or reject our proposal.

"*Thursday, 18th.*—I could not finish my letter yesterday in time for the messenger, and the mail of this morning has made the greater part of it unnecessary. I should hardly have troubled you with it if the King, who is perfectly satisfied with the present state of things, had not directed me to tell you that he agrees entirely with the reasoning of your letter to me, and that he thinks you had not seen his short note in answer to Ld G.'s despatch on the counter-project. The answer of this day alludes to it. We are now, fortunately, restored to our proper situation, and Otto's note affords a complete justification of our refusal to yield what the enemy acknowledges would have given them the means of retrieving their own losses, and restoring their naval power.

"I must close here for the present, lest I lose the messenger again,

who will set off immediately after the council. I have not yet had any conversation with the D. of Portland, who is arrived, and waits for me.

"I ever am, dear Dundas, yours most entirely,

"LOUGHBOROUGH."<sup>b</sup>

The terms required by the French being wholly inadmissible, the negotiation for the proposed armistice was at an end, to the mutual satisfaction of the King and his Ministers; and it seemed as if no other subject of difference was likely to arise between them. But Mr. Pitt, who, in concert with Lord Grenville, Mr. Dundas, and Lord Castlereagh, had been laying a plan for the emancipation of the Irish Catholics,—intending that the King should not be made aware of it till it was matured,—on the 25th of September wrote the following letter to Lord Loughborough:—

("Private.)

"MY DEAR LORD,

"There are two or three very important questions relative to Ireland, on which it is very material that Lord Castlereagh should be furnished with at least the outline of the sentiments of the Cabinet. As he is desirous not to delay his return much longer, we have fixed next Tuesday for the Cabinet on this subject; and, though I am very sorry to propose any thing to shorten your stay at Weymouth, I cannot help being very anxious that we should have the benefit of your presence. The chief points, besides the great question on the general state of the Catholics, relate to some arrangement about tithes, and a provision for the Catholic and Dissenting Clergy. Lord Castlereagh has drawn up several papers on this subject, which are at present in Lord Grenville's possession, and which you will probably receive from him by the post.

"Ever, my dear Lord,

"Yours very sincerely,

"W. PITT."

I am much afraid that Lord Loughborough behaved disingenuously on the receipt of this letter. Sincerely believing that Mr. Pitt was ill qualified for conducting the contest with France, he might patriotically wish that another minister should be substituted for him,<sup>1</sup> but nothing can justify the arts to which he seems to have had recourse for effecting this

<sup>b</sup> Melville MSS.

<sup>i</sup> If we may believe Lord Malmesbury's Diary, the King at this time summoned Mr. Windham and the noble Diarist to Weymouth, with the intention of making the

former Prime Minister, and the latter Foreign Secretary. He adds,—“I have no doubt it transpired somehow or other through the Chancellor, who has been acting various parts lately”—Vol. iv. p. 23.



object. It has been said that, as soon as he gained information of Mr. Pitt's intentions respecting the Roman Catholics, he treacherously made a communication on the subject to the Archbishop of Canterbury, and prevailed upon him and other prelates to make a strong representation to the King that "the Church was in danger." I do not find any sufficient evidence of this fact, but there seems to be no doubt that in breach of good faith he showed Mr. Pitt's last letter to the King,—disclosed to him the contents of the papers therein alluded to, which were forwarded by Lord Grenville,—incensed the King against such of his Ministers as were proceeding in this important affair without his Majesty's privity, and advised him to part with those Ministers rather than submit to such an outrage on his dignity, and to such a violation of his coronation oath. We shall by and by see how far these charges are refuted or corroborated, by a paper afterwards drawn up by Lord Loughborough himself, to prove that his colleagues had no reason to complain of him.

He came to London and attended the Cabinet on the 30th of September, when Mr. Pitt explained his simple, comprehensive, and effectual measure to get rid of civil disabilities on account of religious belief,—which was, to abolish the oaths of supremacy and abjuration, and all such oaths and declarations, and to require only the old common-law oath of allegiance, which might be taken by persons of all creeds, and which for many centuries had been found a sufficient recognition of the duties of the subject to the sovereign. Lord Loughborough declared loudly against this plan, or any modification of it, or any relaxation of the penal laws against the Roman Catholics, and declared that nothing could be done to affect the ecclesiastical condition of Ireland except a commutation of tithes. He added, that he had paid much attention to this last subject, and, with the assistance of one of the Judges, he was preparing a Bill to carry his views into effect. He was desired to mature the measure; and—in ignorance of his secret communings on Catholic emancipation with the King—his colleagues were in hopes that, before Parliament met, his objections to Mr. Pitt's plan might be removed, and it might be submitted to the King with the recommendation of all his Ministers.

But the Chancellor set secretly to work, and composed a most elaborate and artful paper, showing forth the dangers likely to arise from Mr. Pitt's plan, in a manner admirably

calculated to make an impression on the royal mind.<sup>k</sup> I give as a specimen his defence of the Test Act, which was to be repealed. After referring to the statutes passed to insure Protestant ascendancy, he says:—

“These are the safeguards of the Protestant episcopal religion, which the Government in all its departments is bound to support and maintain. The frame of the law and every part of our civil policy is adapted to this object. The Test Act alone has been the subject of some cavil amongst Protestants. It would be well, however, for those objectors to consider whether without such a guard the kingdom would not either have relapsed into popery or fallen into a chaos of independency, irreligion, and anarchy.”<sup>m</sup> To all these acts every Papist must object, not only as inconvenient and hard, but as a violation of what he deems just and legal rights, the effects of a pernicious heresy which he regards as a national calamity. Can a person holding these sentiments,—rendering habitually an account of the movements of his mind, and submitting the direction of his conscience, to a priest whose functions oblige him to enforce such opinions,—be a fit member of the deliberative or executive councils of a Protestant community? The exclusion of Papists from Parliament and office was coëval with the Reformation.”

This paper, remarkable for ingenuity rather than observance of logical rules or a regard for historical accuracy, Lord Loughborough sent to the King at Windsor in the beginning of December, and thereby fully fortified him against the forthcoming plan for placing all his subjects on an equal footing as to their civil rights.<sup>n</sup>

The pro-Catholic section of the Cabinet, remaining ignorant of this correspondence, still tried to make a convert of Lord Loughborough. With this view Mr. Dundas wrote to him a most admirable letter;<sup>o</sup> but all its statesmanlike reasoning was thrown away upon a man actuated by interest—not by conscientious conviction.

Mr. Pitt persevered, and took a course not quite consistent

<sup>k</sup> See it at full length in the appendix to the first volume of Dean Pellew's *Life of Lord Sidmouth*, where it occupies thirteen closely printed octavo pages.

<sup>m</sup> This defence was particularly unbecoming in a Scotchman, to whose country the Test Act was so insulting. If rigidly enforced, no member of the Church of Scotland could have held any office, civil or military, under the Crown. The Presbyterians originally acquiesced in it, that it might be executed against the Roman Catholics,—hoping to be connived at themselves.

<sup>n</sup> The original was found among Lord Sidmouth's papers, enclosed in an envelope bearing the following words in the handwriting of the King himself:—"The Lord Chancellor's reflections on the proposal from Ireland of emancipating the Roman Catholics, received December 13th, 1800." Underneath the King's writing Mr. Addington has added—"From the King; given to me in February, 1801."

<sup>o</sup> The original was communicated to me by the second Viscount Melville, his son. See Appendix to Ch. CJ.XXV., 3rd Edition.

with the respect due to the Sovereign, nor well calculated for success if Catholic emancipation really was his chief object. Lord Malmesbury says, "If Pitt had <sup>A.D. 1801.</sup> been provident enough to prepare the King's mind gradually, and to prove to him that the test proposed was as binding as the present oath, no difficulty *could* have arisen. Instead of this, he reckons on his own power, never mentions the idea at St. James's, and gives time for Lord Loughborough directly, and for Lord Auckland indirectly, through the Archbishop of Canterbury and Bishop of London, to raise an alarm in the King's mind, and to indispose and exasperate him against the framers of this measure."<sup>p</sup>

The Premier made no communication whatever to the King upon the removal of Catholic disabilities, till, Parliament having actually assembled, the House of Commons had elected a Speaker,<sup>q</sup>—and then wrote a long letter to him explaining the proposed measure, and pressing that his Majesty should recommend it in his speech from the throne as necessary for the purpose of consolidating the Union, and giving contentment to all classes of his Majesty's subjects. Lord Loughborough thereupon wrote the following letter to the King, which he thought insured to himself long tenure of office with increased power :—

"The Chancellor, after the most anxious deliberation on the very important crisis to which your Majesty's Government is now exposed, feels it to be his duty to expose to your Majesty, in the most unreserved manner, all the ideas he has been able to collect and digest upon a situation so totally unexpected.

"Your Majesty's opinion upon a question of the utmost magnitude, brought into discussion at the present moment (when no immediate pressure seemed to call for that discussion), had, without doubt, been long known to every one of your confidential servants—at least from the year 1795, at which period you had been pleased not only to express your decision upon the subject then in discussion, but, by an express requisition to the Chancellor, to manifest the grounds upon which that opinion was formed.

"The Chancellor at that period thought it his duty to communicate to his colleagues that opinion, and the very serious grounds on which it was founded, and which seemed to him unalterable, though they were not (as your Majesty knows) so obligatory, according to the opinion he had frankly expressed, as your Majesty had felt them to be.

<sup>p</sup> Diary, vol. iv.

<sup>q</sup> Parliament met Jan. 22, 1801. The speech from the throne was not delivered till the 2nd of February, the interval being filled up with choosing the Speaker and swearing in the members.—35 *Parl. Hist.* 858.

“In the discussion of the business of the Union, no consideration occurred, according to my recollection, which could call for a review of the opinions known to prevail in 1795, nor, as I believe, any assurance pledged of a change of opinion upon the state of religion, as an inducement for acquiescence or support in that measure.

“The question was (to me most unexpectedly) raised in October last. I opposed the proposition in its extent from its outset, and thought myself not singular in that opposition. I stated the grounds of my opposition in writing, and committed them to a fair circulation amongst all my colleagues in your Majesty’s service. You were pleased, knowing of the discussion that was then going on, to express a desire to know my opinion on the various parts of the deliberation. As it was my duty to do, I sent to your Majesty in an official box those papers which for some weeks had been in circulation, and which you could have commanded to be sent to you from the office, and which were sent through the office.

“Amongst the strange misconceptions of the times, it is suggested, I understand, that my private communication with your Majesty had excited an indisposition to hear any other representation on the subject. I have ever thought it my duty to express to your Majesty my own opinion on any subject when you pleased to require it, and I trust that I never have disclosed the opinion of any other person; on this occasion particularly I am confident that I told your Majesty that no person except myself seemed to have formed a decided opinion.”

It has been said that Lord Loughborough not only, in personal intercourse with the King, advised him to resist the proposal, and to dismiss his minister, but actually wrote the answer in which the dismissal is contained. This last statement, however, is without proof, and is very improbable in itself. The King was pleased with the advice he had received from the Chancellor, but by no means placed entire confidence in him. The true “Keeper of the Royal Conscience” now was John Lord Eldon, whose genuine, uniform, and zealous bigotry (with a slight aberration in 1795) had endeared him to his royal master. The actual holder of the Great Seal not only came from a Presbyterian country, and had spoken as a Ruling Elder in the General Assembly of the Kirk of Scotland against persecuting David Hume, but since he arrived in England had on several occasions notoriously uttered the latitudinarian sentiment, “that political rights should not depend upon religious creed,”—although recently he had professed himself a convert to the doctrine, “that none ought to be permitted to hold office who did not belong to the Anglican Church;” and, further, had pronounced its head to be infallible. The King’s answer, likewise, contains

internal evidence that it was not dictated nor revised by Lord Loughborough, who always wrote like a man of education, and could not have been privy to the composition of such a production as this :—

“ A sense of religious as well as political duty has made me, from the moment I mounted the throne, consider the oath that the wisdom of our ancestors has enjoined the kings of this realm to take at their coronation, and enforced by the obligation of instantly following it, in the course of the ceremony, with taking the Sacrament, as a hindering religious obligation on me to maintain the fundamental maxims on which our Constitution is placed, namely, that the Church of England is the established one ; and that those who hold employments in the State must be members of it, and consequently obliged not only to take oaths against Popery, but to receive the holy Communion agreeably to the rites of the Church of England. This principle of duty must, therefore, prevent me from discussing any proposition tending to destroy the groundwork of our happy Constitution ; and much more so that now mentioned by Mr. Pitt, which is no less than the complete overthrow of the whole fabric. . . . I had flattered myself, that on the strong assurance I gave Mr. Pitt of keeping perfectly silent on the subject whereon we entirely differ, provided, on his part, he kept off from any disquisition on it for the present, we both understood our present line of conduct ; but as I unfortunately find Mr. Pitt does not draw the same conclusion, I must come to the unpleasant decision, as it will deprive me of his political service, of acquainting him that, rather than forego what I look on as my duty, I will, without unnecessary delay, attempt to make the most creditable arrangement, and such as Mr. Pitt will think most to the advantage of my service; as well as to the security of the public.”<sup>9</sup>

The same day that this letter was written there happened to be a *Leyce* at St. James's, and the King made a declaration, intended to be circulated, “ that he should consider any person who voted for the measure proposed by his Minister as personally indisposed towards himself.”

Upon these manifestations of the royal will, Mr. Pitt communicated to the whole Cabinet that his Administration was at an end : but as the first United Parliament of Great Britain and Ireland had assembled, and Mr. Addington had been re-elected Speaker, and the session was to be opened next day, it was necessary to frame a Speech for the King which should make no allusion to this unhappy difference,

<sup>9</sup> Adolphus, vol. vii. 449, 450. There are two letters from the King to Mr. Addington, dated 5th and 6th Feb. 1801, which clearly prove that at the time when Mr. Pitt was

dismissed, and Mr. Addington was called in, no communication was going on between the King and Lord Loughborough. (*Life of Sidmouth*, vol. i. p. 294-5.)

and that the change of Ministry should not be announced till after the Address had been voted by both Houses.

Accordingly, the Speech in vague terms described the Union with Ireland as "a measure calculated to augment the resources of the empire, and to cement more closely the interests and affections of his Majesty's subjects."

While the question of Catholic Emancipation was not alluded to in the debate on the Address in the House of Lords, in the House of Commons regret was expressed that the Speech from the throne held out no hope of strengthening the empire in this season of difficulty by communicating equal rights to all classes of the community. Ministers contented themselves with defending their foreign policy. As soon as the Address was carried, Mr. Pitt and Mr. Dundas ceased to attend in the House, and the fact became known that they were virtually out of office.

What was the astonishment of the public when they were informed that Mr. Addington had been sent for to construct the new Cabinet! And what was the consternation of Lord Loughborough when he certainly knew that Lord Eldon was to be Chancellor!<sup>\*</sup> Never was there such a striking example of the engineer "hoist with his own petard." There had been rumours afloat that Lord Eldon, when made Chief Justice of the Common Pleas, had engaged, at the King's urgent request, to accept the Great Seal as soon as a vacancy could be made for him; but these Lord Loughborough had entirely disbelieved, confiding in the King's courteous behaviour to him,—the credit he had gained in quelling the riots in 1780,—his services in bringing over the Whigs in 1792,—the strong Anti-Jacobin zeal he had since displayed,—and, above all, the vigour with which he had opposed Mr. Pitt's measure in favour of the Catholics. But, instead of continuing to hold his high office, and becoming, as he hoped, the most influential member in the new Cabinet, he suddenly found that he was to be reduced to insignificance, and exposed to ridicule."

When the change of Government was announced in the House of Lords by Lord Grenville, he did not mention the

<sup>\*</sup> From a letter of Lord Eldon to Lord Kenyon it appears that even so late as the 14th of February he with coyness talked doubtfully of his appointment; but it had been finally fixed more than a week before.

"Lords Loughborough and Auckland ap-

pear to have bungled the business, and not to have resolution or firmness of character to act openly on what they have combined (I apprehend) secretly. The consequence is, that the Chancellor will resign against his will."—*Lord Malmesbury's Diary*, iv. 5.

name of Lord Loughborough; saying only, that "some time ago, Earl Spencer, the Earl of Chatham, and himself, with several of his Majesty's servants in the other House, thinking it expedient that the benefits of the Union should be rendered as extensive as possible, by the removal of certain disabilities from a great portion of the people of Ireland, and that the measure could only be effectual by coming from the Executive Government, had proposed it; that it was not deemed eligible; that not being able to prevail, and their policy remaining unaltered, they considered themselves bound to retire, and that they only held their offices till their successors were appointed." Lord Loughborough remained silent; and many supposed that he would be included in the new arrangement.

While things were in this unsettled state, the confusion was unspeakably aggravated by the King having a sharp attack—not to be concealed—of his former illness. He was for a short time made to sign papers laid before him; but becoming incapable of this act, the state of his mind was made known by daily bulletins, and, by order of the Privy Council, public prayers were offered up for his recovery. Speculations for a Regency were renewed; and, the retiring Ministers still holding the seals of office, it was supposed that they would be forced back into power, till by the old "phantom" a Regent should be appointed—probably the Prince of Wales, who was then entirely under the influence of Lord Thurlow, Mr. Fox, Mr. Sheridan, and Mr. Erskine. No contingency now offered any hope to Lord Loughborough; and he watched the progress of the royal malady with feelings very different from those which he had exhibited twelve years before, on a similar occasion. All that he could expect was to continue to hold the Great Seal while the forms were gone through of examining the King's physicians, of appointing secret committees, of providing for the custody of the King's person, of debating the restrictions to be put on the Regent, and by a "forged process" giving the royal assent to the Regency Bill.

Lord Loughborough did make an effort to be reconciled to the Prince of Wales, and had two interviews with him under colour of communicating to him the state of the King's health; but his Royal Highness was inexorable, and he openly expressed his impatience to assume the Regency that he

might throw himself into the arms of the Whig Opposition." To mortify him, Lord Loughborough resolved that this consummation should be delayed as long as possible, and set a dangerous precedent, which his successor repeatedly acted upon, by making the King appear personally to exercise the most important prerogative of the Crown when in a state of mental alienation. On the 25th of February, while his Majesty was under the care of Dr. Willis, he was made to sign a Commission for giving the royal assent to an Act of Parliament. Lord Loughborough declared that "when he carried the King the *Brown Bread Act* to pass by Commission, his Majesty was in the perfect possession of his understanding." \* But Lord Malmesbury justly considers such a declaration as an aggravation of the offence which was committed.

On this occasion a letter, which might have caused some alarm, was addressed to Lord Loughborough by a former political associate :—

"MY LORD,

"Upon the distant terms on which we have lately lived, I admit you have a right to consider the following advertisement as a seizure of an opportunity of conveying something petulant and vindictive.

"Probing my own heart, I feel I may cast aside such dirty motives.

"It is believed that you, the Chancellor, was not present in the room when the King's hand was put to the first Commission. It remains with you to choose whether you will force on inquiry from the attendant physician to this important point, or whether you will obviate it by taking a bill of indemnity.

"The hint is not from an enemy, but a friend.

"I shall be happy to find I am mistaken in all my facts, and that the testimony of Dr. Willis will do away this suspicion.

"I am with great respect,

"CARLISLE." †

The speculations about a Regency were almost miraculously put an end to by a "prescription" of the new Prime Minister—in a literal, not a figurative, sense. Being the son of a medical man, he had heard from his father that such irritations as now disturbed the nerves of his Majesty might be allayed by the patient's head reposing on a pillow of hops.

\* Diary, iv. 17.

† Ib. 17. Yet Lord Malmesbury himself seems to have become less scrupulous. He says, under date 7th March,—“Idea of a Council at Buckingham House on Tuesday, but it is hoped not, and that the Chancellor

by himself will carry the Loan Bill to sign.”

† Ross. MSS. The letter is without date; but there is the following endorsement upon it in the handwriting of Lord Loughborough —“E. of Carlisle, 19th March, 1801.”



The recipe was accordingly tried,—sleep was induced,—next morning his Majesty was better, and in a few days, with proper precautions, he could be produced in public.\*

When his recollection returned to him, he inquired of the Duke of York “what had passed—if any resignation had taken place?” The Duke said, “None could without his Majesty’s leave.” “Has the Chancellor resigned?” asked the King. “No, Sir,” said the Duke: “he never will give the Seals into any hands but yours.” This pleased the King, who ordered Dr. Willis to go to Lord Loughborough to say “he was recovered.”

After making up his mind to submit to fate, the poor Chancellor was again doomed to feel the cruel pangs of suspense before he was consigned to the gloomy calm of despair. The King, in directing Dr. Willis to speak or write to Mr. Pitt, said, “Tell him I am now *quite* well, quite recovered from my illness; but what has *he* not to answer for, who is the cause of my being ill at all?” Mr. Pitt professed to be much affected, and as he had been deeply blamed by several of his associates for the manner in which he had wantonly broken up a strong Government, and he himself felt some repugnance to the loss of power, he actually offered to give up Catholic emancipation.

In consequence a negotiation was opened for restoring all the outgoing Ministers to the offices which they had held. Loughborough again believed that the Great Seal was his own, and flattered himself that Pitt, after this humiliation, would be more meek and conciliating. With these feelings he wrote the following letter to the King:—

“Upon a most anxious consideration of the papers your Majesty was pleased to intrust to the Chancellor’s perusal, he cannot abandon the hope that it is still possible to avert the incalculable mischief which would ensue from Mr. Pitt’s withdrawing from your Majesty’s service.

“That hope arises from the terms of Mr. Pitt’s first communication to your Majesty, proposing to lay aside for the present the discussion of that important question which never has been brought forward without mischief. An apprehension that an Administration known to be divided on any essential point would appear to have less stability than the exigence of the times requires, seems to have occasioned the second note. There is much force in that consideration. But the remedy is easy, though the generosity of Mr. Pitt’s mind would not allow him to suggest it.

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\* It was this cure which fixed upon Mr. Addington the nickname of “the Doctor,” and gave rise to Canning’s jest against him as being one of the “Medici.”

"It is far from his intention to intimate the possibility of any relaxation of that opinion which your Majesty most conscientiously has adopted ; but, as the discussion of the question at present is in no respect necessary, and in every respect dangerous in the present very arduous and difficult crisis of public affairs, he cannot think it impossible, on a view of the correspondence your Majesty has been pleased to intrust to him, to avert the incalculable mischief which would ensue upon Mr. Pitt's withdrawing at this time from your Majesty's service.

"The difficulty which Mr. Pitt seems in his last note most to apprehend from his continuance in office for any time after a difference on what he deems an essential measure, which could not be concealed, is the want of confidence in the permanence of his Administration which would ensue if he continued to act with a divided Cabinet. That opinion appears to me well founded. An essential difference of opinion amongst your Majesty's confidential servants weakens Government, even when it is not known to which side your Majesty inclines. Until this unfortunate occasion I have never differed with Mr. Pitt. If I could not accommodate the opinion which I had frankly declared to what at last appeared to be his, I had determined to request your Majesty's permission to retire. Had I felt any reason to suppose, at the last communication in Cabinet on the 28th of January, or at a private conversation the day preceding, that his mind had been so made up on the subject as to admit no farther discussion on the proposition itself, or on the modifications of which it was said to be susceptible, I should have apprised him of my intention to remove any obstruction which my remaining in office could create to his making the experiment, by requesting your Majesty's permission to withdraw from a situation in the law that gave me more consequence than my single vote and opinion could claim.

"I have now humbly to beseech your Majesty so to dispose of me—which would be a sufficient indication that there exists no opposition in your Majesty's councils to prevent the trial of the public opinion on the question, whenever it shall be brought forward, which I hope and trust will be postponed to a less agitated period than the present. In this and whatever other alterations Mr. Pitt should think expedient to countervail the rumours of the day, I most humbly, but most earnestly, entreat your Majesty to acquiesce, for the vast object of maintaining the external consequence and internal tranquillity of your dominions and, in truth, of the whole habitable world."

But Addington, who had just tasted the importance of the Premiership, was by no means disposed to give it up ; and Pitt and Dundas still thought there would be a great advantage in some one else submitting to the disgrace of making a peace ;—after which they might displace him at pleasure.\* So the

\* "Dundas pretended to be eager for returning to office, and for throwing Addington overboard, if he would not be satisfied with a subordinate place ; 'but,' he said, very un-

advisedly, probably unintentionally, 'if these new ministers stay in and make peace, it will only smooth matters the more for us afterwards.' This betrayed a good deal. . . .

attempt at restoration proved abortive, and Lord Loughborough was again disappointed. Mr. Addington had intended, on the formation of the new Government, to offer him the office of President of the Council.<sup>b</sup> The reason why this arrangement did not take place has not been fully explained—but probably it was the secret dislike of him still cherished by the King, who, we shall see, would not even permit him to have a seat in the Cabinet. Some have said that Lord Loughborough, stung with resentment at the loss of the Great Seal, spurned from him an office of inferior dignity. I believe that if such an offer had been made, it would have been readily accepted. As ex-Chancellor, he could not look forward to the melancholy pleasures of opposition, the Whigs seeming for ever annihilated, and strong personal objections existing to his rejoining their body. Indeed he had contracted so great a passion for being connected with the Court, that I am not sure whether he would have refused to walk backwards in the presence of the King, carrying a white wand, as a lord of the bedchamber. It would appear that, upon due deliberation, Mr. Addington, Lord Eldon, and the King entertained no confidence in the sincerity of the intolerant principles which he now professed, and were resolved entirely to get rid of him. They behaved to him, however, with courtesy, and, as a *solatium* for the loss of office, they conferred upon him an earldom, descendible to his nephew, and a pension of 4000*l.* a year.<sup>c</sup>

It is a mysterious fact, that although the Government was changed on the 10th of March, Mr. Pitt and his other outgoing colleagues giving up their seals on that day, and their successors immediately kissing hands,—the transfer of the Great Seal did not take place till the 14th of April following. I can only conjecture that, from the King having several fresh paroxysms of his disorder, the prudent Eldon had still misgivings as to his Majesty's recovery; for when he had actually received the bauble into his keeping, he declined giving up the office of Chief Justice of the Common Pleas during several

The impression the whole of this taken together leaves at this moment is either that Pitt is inclined to let this ministry remain in office long enough to make peace, and then turn them out, or that he, &c. mean and wish to keep the government of the country in their own hands. That, if they can, they will try to be *entreated* by the King to do so; and if this does not succeed, they will gratify their pride another way, by vapour-

ing on the sacrifices they are ready to make for the good of the public. The whole is a very sad story."—*Lord Malmesbury's Diary*, iv. 39, 40, 43.

<sup>b</sup> Life of Sidmouth, vol. i.

<sup>c</sup> This was the first pension granted under the Act giving retired allowances to ex-Chancellors. Till then they relied upon tellerships, or other sinecures and rever-  
sions.

weeks following, for the avowed reason that if the royal malady returned in an aggravated degree, he might "fall between two stools."<sup>d</sup>

Lord Loughborough presided as Chancellor on the woolsack two months after he was virtually out of office. During this interval one very important debate took place, on Lord Darnley's motion for a committee on "the state of the nation;" and he then made his last great speech in Parliament. We are told that on this occasion he summoned up all his ancient energy, and had considerable success; but the printed report of what he said is exceedingly defective. He seems to have taken a masterly view of our contest with France, and of the position in which the nation then stood, and to have been particularly happy in defining and supporting the belligerent right to search neutral vessels,—on which he declared that all our naval greatness depended. The Whigs remained equally prostrate as when Pitt was minister,—dividing only 28 against 115.\*

On a subsequent day Lord Loughborough left the woolsack, and spoke on the question which then keenly divided public opinion,—“whether, where a wife is divorced for adultery, marriage should be permitted between her and her paramour?” Against all the arguments arising from compassion to the woman, and the fitness of punishing the man by the understood obligation that he must repair, as far as possible, the honour of her whom he has seduced from the path of duty, the Chancellor sternly maintained that such marriages were

<sup>d</sup> Twiss's *Life of Eldon*, ch. xvi.—Lord Malmesbury, impartially and indignantly reviewing the conduct of the two sections of the Tory party at this time,—the one led by Mr. Pitt, and the other by Lord Loughborough,—says: “Amongst each there is little doubt that many acted from principle and conscientiously; but it is also, I fear, not without some degree of truth, that others are to be found who had their own private interests in view, or who acted in order to gratify their private resentments, or promote their ambitious views; and these men, let them be who they will, may be considered as the most consummate political villains that ever existed. They ought to be held in execration by the country, and their names handed down to posterity with infamy, for they will have been the first cause of the destruction of the intellects or life of a Sovereign, to whose kingly virtues,

and to whose manly and uniform steady exertion of them during a reign of forty years, this country and every subject in it owes the preservation of its liberties, and every thing that is valuable to him.”—*Diary*, vol. iv. 15. However much we may lament the King's resistance to the liberal policy of his Minister, it is impossible not to admire his constancy, and to sympathise with his sufferings on this occasion. At the commencement of his illness, he read his coronation oath to his family—asked them whether they understood it—and added, “If I violate it, I am no longer legal Sovereign of this country, but the crown falls to the House of Savoy.” Recovering his recollection, partially, after one of his paroxysms, he said, “I am better now, but I will remain true to the Church.”

\* 35 Parl. Hist. 1199—1203

contrary to religion and morality, and ought to be forbidden in England, as they are in Scotland and most other Protestant countries.—On his suggestion a standing order was made, which is still in force, that no divorce bill shall be introduced into the House of Lords without a clause forbidding such a marriage;—but the clause has always been struck out by the House of Commons, and the Lords have acquiesced in the amendment.

Meanwhile, there being rumours afloat that Lord Loughborough had been acting unfairly in the late crisis,—had abused the King's ear,—and had betrayed his colleagues,—he wrote and circulated among his friends the following explanation of his conduct:—

“The only period in which, from the time of my entering into office, I had been absent from the correspondence amongst the persons principally concerned in the public business, was in the course of the autumn of 1800. Obligated by the duty of my own office to a constant residence in town, except in autumn, I had during that season never removed farther than Tunbridge Wells, or the coast of Kent, each of which brought me nearer to Mr. P. and D., who lived together, than if I had remained at Hampstead, and of course placed me in the way of knowing all that was passing, as well regarding the external as internal business of the State.

“I was not conscious of any reserve towards me; believed the communication to be perfectly frank; and, being naturally indifferent to penetrate into any details of business, had not the least suspicion that there could be any reserve observed towards me on any great measure. . . . In the autumn of 1800 I went early, and without any particular occasion to require my presence, to Weymouth, where for two or three years successively I had been obliged to go on public business, and had stayed for a few days each time. It was not my intention to have remained here long; but the King seeming to desire that I should remain some time, and having the goodness to remark that the air and the bathing agreed with me, and his Court being so small that even the addition of my niece and of Mr. N., who was ready to join our party, was not indifferent, I decided to remain there during H. M.'s residence.

“Mr. Windham and Mr. W. were there on my arrival, who also prolonged their stay on the same grounds.

“Soon afterwards it became necessary to hold a Council at W. for the meeting of Parl<sup>t</sup>., and the presence of W. and myself was a convenient circumstance.

“The D. of P. came down for that occasion, and returned immediately. In a few days after his return, a messenger arrived with a minute of the Cabinet (of which there were very few men in town), the purport of which was not very agreeable to the K.'s ideas, and still less so to W. . .

"This despatch was followed the next day by a private letter from Mr. P. to me, explaining the grounds of the former despatch. I had had the good fortune to check the first emotion of disapprobation that the minute had produced, and to obtain the return of a moderate answer; that which was first written being, not destroyed, but withheld. The sequel of that business made it unnecessary to send it, as the state of affairs had changed.

"On this occasion my presence had been of some use to the easier conduct of public business, on a point which, had all the King's servants been in a situation to have consulted together, seemed very likely to have produced a rupture; for D., who was at Ch., wrote to me a very warm letter, much irritated against the measure that had been taken, and in a degree reproaching me for the assent he supposed I had given to it. My answer explained to him the grounds on which I had not assented, but acquiesced, and prevented an absolute dissent; which must have led to an absolute separation of at least one servant. He, however, had felt so strongly the objection, that he thought it necessary to enter a formal protest against it, after the subject was in effect gone past.

"There happened about the same time one other incident, neither object nor detail of which I distinctly recollect, in which my immediate intercourse prevented a like incident of quick disapprobation.

"In the last days of September, about the 27th as I recollect, I read a letter from Mr. P., who had kept up a correspondence with me, desiring me to return to town for a meeting on the 2nd of October, with L. C., who wished, before his return to Ireland, to be instructed what language he should be authorised to hold with respect to the Catholics. This letter accompanied a box of papers containing L. C.'s exposition of the point in question.

"Not having prepared to leave W. so abruptly, it was impossible for me, especially as the box and letter had been delivered to me by the messenger in the view of the King, not to inform H. M. of the occasion of my sudden departure, and I thought the best way was to show him the letter, in which there was nothing to be kept back.

"The knowledge that a subject of this nature was in discussion, I was aware would occasion some anxiety in H. M.'s mind, and I therefore determined not to open the papers for the short time I should stay at W. —H. M., as I expected, did not fail to talk to me earnestly on the subject, which he supposed might be treated at the appointed meeting. I evaded the discussion by the excuse of not being able to enter upon the perusal of the papers, and confined myself to say that I was persuaded nothing of material importance could be settled at such a meeting, nor without consulting L. C., who was soon expected in this country, and that for my own part I must think that a subject of so much extent as the general description of it in the letter indicated could not be brought in many meetings to any certain conclusion.

"H. M. continued evidently anxious during the time I remained (which he retarded for a whole day) upon this subject, but he permitted me to retain the same reserve.

"I arrived in town the day of the meeting, 30th September; but having had in my journey ample time to consider the papers, and digest my opinion on them, I felt myself sufficiently prepared with my own opinion.

"Except Lord L., Mr. D., and Lord W., all, I think, were present. Lord C. there also. The business was slowly opened, and for some time loosely discussed. I then stated shortly, but earnestly, my own opinion decidedly against the general question; proposing a measure as to tithes which had been thought of in this country, and not objecting to the idea of a pecuniary aid to the clergy, Catholic or Dissenting, but much more limited in its extent than the plan proposed, referring to a paper I had formerly given, before the Union was in view, to Mr. P., on that particular point.

"I rested much on the different state of the questions to be discussed since the Union, and before that event,—that now, the churches of both clergies being consolidated, no point could be made in one that would not of necessity affect either as to tithe, or any other part of the ecclesiastical establishment; and the security of the Church of England was necessarily involved in that of Ireland, and the interest of the State was the same in both; that a change here would be most pernicious, and could not be attempted without the utmost hazard, especially as no one could be ignorant how totally adverse it must be to the K.'s opinion, founded on a high sense of religious obligation. The topics I urged did not seem to be new to any one, nor were they much combated by any except Lord G. I rather judged that they were strongly felt by Mr. P.

"The plan I opened with regard to tithe met with very general concurrence, and I undertook to deliver it in writing. The result of the meeting was pointed and express, that Lord C. should be authorised to say, that some regulation with regard to tithe which might be adapted to the peculiar circumstances of Ireland was in contemplation, that there was also a disposition to give some pecuniary aid to the clergy, as well of Catholic persuasion as of Dissenters, the extent and mode of which required more ample information to be gained from themselves. And as to the question of further indulgence to the Catholics, it was a subject of so deep and serious consideration that no assurance on that subject could be held out to them, the Administration not having formed any opinion for or against their expectations.

"From a letter of Lord C., after his return to Ireland, which came afterwards into circulation, there is reason to think that he had understood and followed his instructions.

"It was particularly my part to deliver in the plan with respect to tithe, which consisted in a bill drawn by Mr. J. Heath, which two or three years before I had communicated to some of the Bishops and left with the Archbishop, who all seemed to approve the idea, but thought the time unfavourable for the proposal.

"I sent the next day to Mr. J. Heath for a copy of it, and about two days afterwards transmitted it, with an explanation, to the Secretary of State's office for circulation.

"I then, pursuing the other parts of the subject, drew up a minute of my opinion upon them at considerable length; one copy I sent to Mr. Pitt, the other to the D. of P.; and though I have no note of the date, I think this must have been about the 20th of October, perhaps later, for it took up some time, and prevented my going to Bath.

"The D. of P. at first took it to be a private communication, and desired to take a copy of it. I informed him that I meant it to be official and to be put in circulation, wishing also that the circulation might be extended to Lord Clare, who was then expected in England.

"About the opening of the session of Parliament, the King asked me one day, in the course of my attendance on him, what had been the result of the council for which I had been called to town. I said, nothing more than to encourage an idea I had formed in conversation with Mr. J. Heath in regard to tithes, and to hold out some hope of pensions to the Catholic and Dissenting clergy, neither of which were at all settled. He observed, these were not dangerous measures in themselves, and might be good or bad according as they should be adjusted. But had nothing been settled as to the Catholic question? I assured him nothing had been settled on that question, though it had undergone some discussion. He seemed desirous to know how it had been treated; and I said, so loosely, that I could not pretend to know any one's opinions but my own, which I had stated in writing and put in circulation. He then expressed a desire to see both that and my project with respect to tithes; in consequence of which I sent a copy of each to the office of his Majesty. At the next levee he was pleased to tell me that I had not convinced him; that he had always been of the same opinion with regard to the Catholic question, but he thought I had reasoned it fairly, and as to the other subject he should have no objection if the Bishops had none.

"This is all the intercourse I had with H. M. on this subject since the year 1795, when by his express command I delivered my written answers to some questions he was pleased to put to me upon this subject, which answers fell so short of the high sense of the obligation H. M. felt to be imposed upon him, that they were rather displeasing to him."

I abstain from the invidious task of commenting on this document.

At last the inevitable hour arrived to Lord Loughborough when, giving up the Great Seal, he was to be *civiliter mortuus*. This sad catastrophe happened at St. James's Palace on the 14th of April. George III. affected to treat him very courteously, and thanked him for his very valuable services; but there was an alacrity in his Majesty's manner, and a twinkle in his eye, which, in spite of all attempts at concealment, betrayed his Majesty's high satisfaction at throwing off a man



whom he never trusted, and getting a Chancellor whose sentiments he knew to be sincerely and steadily in accordance with his own.

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## CHAPTER CLXXV.

### CONCLUSION OF THE LIFE OF LORD LOUGHBOROUGH.

OUR ex-Chancellor, to the unspeakable surprise of the new Premier, retained his key of the Cabinet boxes, and continued, unsummoned, actually to attend the meetings of the Cabinet. He was treated on these occasions with respect; but he at last received the following formal dismissal:—

A.D. 1801.

“Downing Street, April 25, 1801.

“MY DEAR LORD,

“A misconception appears to have taken place, in consequence of which I am led to trouble your Lordship from various considerations, and particularly from a sense of duty to the King. I have reason to believe that his Majesty considered your Lordship’s attendance at the Cabinet as having naturally ceased upon the resignation of the Seals, and supposed it to be so understood by your Lordship. Much as I should feel personally gratified in having the benefit of your Lordship’s counsel and assistance, I will fairly acknowledge to you, that I did not offer to his Majesty any suggestion to the contrary; and, indeed, I must have felt myself precluded from doing so by having previously in more instances than one expressed and acted upon the opinion, that the number of the Cabinet should not exceed that of the persons whose responsible situations in office require their being members of it. Under these circumstances, I feel that I have perhaps given way to a mistaken delicacy, in not having sooner made the communication to your Lordship; but I am persuaded you will see that I should be wanting in duty to the King, and in what is due to yourself, if I delayed it beyond the time when a minute of Cabinet with the names of the persons present must be prepared in order to be submitted to his Majesty.

“I hope your Lordship will give me full credit for the motives by which I can alone be actuated upon this occasion, as well as for the sincere sentiments of esteem and regard with which I am, my dear Lord,

“Your Lordship’s most obedient and faithful servant,

“HENRY ADDINGTON.”

It would have been well for the dignity of Lord Loughborough's character if he had died on the day of his resignation. The world would then have said, that if his life had been prolonged,—after he was freed from the toils and cares of office, he would have devoted his splendid abilities to the task of reforming and improving the laws of his country; and that, the literary ardour which had burned so bright in his bosom when he was the associate of David Hume and Adam Smith being rekindled, he would have rivalled Clarendon in handing down to posterity a valuable history of the times in which he lived. Unfortunately he survived; and thus his real destiny is recorded:—"A still more crafty successor obtained both the place he had just quitted in the King's service, and the place he had hoped to fill in the King's favour; he was made an Earl; he was laid on the shelf; and, as his last move, he retired to a villa remarkable for its want of all beauty and all comforts, but recommended by its near neighbourhood to Windsor Castle, where the former Chancellor was seen dancing a ridiculous attendance upon Royalty, unnoticed by the object of his suit, and marked only by the jeering and motley crowd that frequented the terrace.<sup>i</sup> For three years he lived in this state of public neglect, without the virtue to employ his remaining faculties in his country's service by Parliamentary attendance, or the manliness to use them for his own protection and aggrandizement."<sup>j</sup>—There is some rhetorical exaggeration in this statement; but it is substantially correct. By a reference to the Lords' Journals, we find that the ex-Chancellor was tolerably regular in attending the House during the remainder of the session of 1801,<sup>k</sup> and during the sessions of 1802, 1803, and 1804, although he took very little part in its proceedings. He did not at all assist in judicial business, as, without any open quarrel, there was no cordiality between him and his successor; and he merely, like the great

i I have been informed by my friend and former colleague, Sir William Horsey, who occupied this villa with his family during a long vacation, that although it is not remarkable for picturesque beauty, it is very spacious and commodious; and according to the testimony of Miss Cotes and others, George III., without any real regard for the ex-Chancellor, always behaved to him with courtesy and seeming kindness.

j Lord Brougham's *Statesmen*, i. 86.

\* Having resigned the Great Seal on the 14th of April, he was present on the 18th

20th, 21st, 22nd, 23rd, and 27th, as "D<sup>e</sup>. Loughborough." On the 28th he was introduced as "Earl of Rosslyn," and he appears in the roll as "C<sup>s</sup>. Rosslyn" about as often as any Earl not in office. In 1804 he was present ten times in March, five times in April, four times in May, once in June, and eleven times in July—the last of these being the day of the prorogation; and I do not find his name afterwards in the Journals, so that I presume he never again appeared in Parliament.

bulk of our hereditary legislators, came to lounge in the House a short time before dinner, that he might inquire after news, —when he had not any more lively occupation. He now and then spoke a few sentences in a conversational tone, but never aimed at an oration. Having once or twice heard him on these occasions, I remember being rather at a loss to conceive how he could have been the formidable opponent of Dunning and Thurlow, of Fox and Burke,—although it might be discovered that he had become unnerved by listlessness, and that, if excited, he might still have been capable of great things.

He first opened his mouth as an ex-Chancellor to express his approbation of Lord Thurlow's doctrine, that a divorce should be granted on the petition of the wife for the adultery of the husband with the wife's sister.<sup>m</sup>—When the bill was brought in to indemnify those who should be sued for any thing done under the "*Habeas Corpus* Suspension Act," he took merit to the late Administration for having saved the State, and boldly justified their habit of employing spies and informers.<sup>n</sup>—He supported, against Thurlow, the bill introduced when the Reverend John Horne Tooke was returned to Parliament, to prevent a priest in orders from ever again sitting in the House of Commons,—and with some historical research he showed that this regulation was according to ancient usage.<sup>o</sup>—The articles of the Peace of Amiens coming on to be debated, he censured them, but chiefly confined his objection to the omission of an article to recognise the honour to which the British flag was entitled in the narrow seas—"an important right, which implied our dominion of the sea, and the maintenance of which warmed the heart of every British seaman."<sup>p</sup>—When hostilities were recommenced, he supported the Government, saying that Buonaparte's rudeness to Lord Whitworth was a sufficient cause of war, and that his whole conduct since he signed the treaty had been a uniform system of arrogance, insult, and injury.<sup>q</sup> In 1804 he made a few unimportant observations on the proceedings against Judge Fox,<sup>r</sup>—on the mode of maintaining the London clergy,<sup>s</sup>—and on the Insolvent Debtors' Bill.<sup>t</sup>—He never again spoke in the House. Such is the inglorious termination of his Parliamentary career!

He appears to have been treated with neglect by all parties—which is not much to be wondered at, considering the little pains he took to preserve his importance as a public man. The

<sup>m</sup> 35 Parl. Hist. 1433.<sup>n</sup> Ib. 1540.<sup>o</sup> Ib. 1549.<sup>p</sup> Ib. 723.<sup>q</sup> Ib. 1511.<sup>r</sup> Parl. Debates, vol. xi. 925.<sup>s</sup> Ib. 1108.<sup>t</sup> Ib. 1130.

Duke of Portland, the President of the Council, having heard of his complaints of the slights he experienced from the Government, and of his saying that "he now knew nothing except what he read in the newspapers," became alarmed lest he might actually join the Opposition, and thus wrote to Lord Chancellor Eldon: "The most perfect means should be taken to put an end to the sort of language which is held by Lord Rosslyn—to remove from him all cause of complaint upon the ground of want of attention, or shyness, on the part of those who compose the Administration. With permission, I cannot help thinking that the station you hold gives you a particular title to commiserate and consult with him; and excuse me for adding, that I am very anxious that the suggestion I have ventured to throw out respecting Lord Rosslyn may be approved and adopted by you."

But it is not wonderful to see him so fallen as to be a fit object for the commiseration of his former friends, when we find that his prime object of ambition now was the personal notice of the Sovereign. We have observed that as he became alienated from Mr. Pitt, he enlisted himself in the band of "King's friends." His Majesty, who, notwithstanding his apparent bluntness, had considerable powers of dissimulation, thenceforth treated him with such seeming confidence as to lead the wary Scotsman into the delusion that he was a darling favourite. Even when superseded by Eldon, the King induced him still to believe that this was only for political reasons, and that personally his Majesty was affectionately attached to him—having taken an opportunity to tell him that "the Queen, likewise, found much pleasure in his society, and that they both desired to see him as much as possible at Court." This conversation, which he took *au pied de la lettre*, was the cause of his hiring the ugly villa of Baylis, near Slough, that he might be near Windsor, and he did frequently throw himself in the way of the Royal Family while they were resident there.

"He likewise had a *farm* at Baylis, which he seems to have bargained for with great deliberation. I find the following memorandum in his handwriting:—

"1. What should be a fair rent?

"2. How far, at a rent of 40s., parts might be underlet?

"3. What number of horses would be necessary for the farm? Expense of their keep?

"4. What number of men? Whether two

to each team sufficient for all the work, as ploughing, &c.?

"5. What the allowance to bailiff?

"6. What ought to be the produce to cover rent, taxes, tithes, and the charge of management?"

Among his papers are very minute accounts of the farm, the number of labourers employed, and the operations of each day throughout the year.—*Rossl. MSS.*

He likewise followed, them to Weymouth, where they spent a considerable part of every summer; and he was intensely delighted to be noticed by them on the Esplanade, or to be invited to join their excursions on the water. In August 1801, from Weymouth, he writes a letter to Lord Auckland, which, after touching on some private matters, and showing that he was on very familiar terms with the Queen and the Princesses, thus proceeds: "I can with perfect satisfaction confirm to you all that you may have heard of their Majesties' perfect health. The King, I think, has at no time when I have had the means of seeing him every day, and often all the day, appeared to be in so steady a state of health. He might at times appear, to those who have always seen him in high spirits, to be rather low; but the case really is, that his manner is much more composed, and he is always ready to enter into conversation when it is going on, though he does not always start it. He is become also more moderate in his exercise, and admits that it is possible to be fatigued.—Public events seem at present to give no occasion for uneasiness, and I trust they will continue in such a state as not to ruffle his mind, the composure of which is the great point on which the fate of our country depends. The weather here is delightful for sailing, but rather warm for any other exercise."

I do not find that our ex-Chancellor took any part in the ministerial crisis which was terminated by the resignation of Mr. Addington. After Mr. Pitt's return to power, he neither actively opposed nor supported that minister, but continued more sedulously than ever to cling to the Court. Whether he thought that, in party vicissitudes, which were likely to arise, the King's favour might restore him to office, or he considered the King's favour his supreme and ultimate good, I know not; but thus he continued to trifle away his existence:—when the Royal Family were in London, residing at a villa

May, 1804.

▼ In a letter from Weymouth, dated Sept. 1800, he gives an interesting picture of the Court of George III. there. Having discussed the question on which his opinion had been asked, "Whether, after a divorce obtained collusively in Scotland, a marriage of one of the parties would be valid?" he says, "The course of life at this place has agreed so well with me that I wish to prolong my stay, if I should not feel it a necessary duty to return to London, where I am afraid the Lord Mayor is proceeding like his predecessor in 1780, and will produce similar excesses.

I was the only person at sea this evening without a great coat, and without a wish to have had one. The great advantage of the attendance here is the constant movement in the open air, and the short meals. When I arrived I was horribly fatigued by the pedestrian exercise; but I am become a very stout walker.—A continental peace would be very desirable; but, in truth, no peace which could be expected in the present state of things would amount to more than an armistice."

which he had near Hampstead,—fixing himself at Baylis when the Court was at Windsor,—and following in their suite when they removed to the sea-side.\* In the autumn of 1804, after his return from Weymouth, where, as usual, he had been gratified by walking with his Majesty on the Esplanade, and accompanying him in little trips to sea in the royal yacht, he was seized with a severe fit of illness in London, but he soon rallied, and by the advice of his medical attendants he went to Baylis, where the air is supposed to be very salubrious. Here, his recovery being soon completed, he continued his usual mode of life,—frequently paying his duty at the Castle, kindly receiving his relations under his roof, keeping up a friendly intercourse with several agreeable families in the neighbourhood, and amusing himself with all the new works of any merit which issued from the press. His constitution, although not robust, seemed unbroken, and his friends hoped that he might reach extreme old age.

A statement has been made which would be very curious if it might be relied upon: “that his Scotticisms and his vernacular tones returned as his vigour was impaired in the decline of life; showing that it was all the while an effort which could

\* I have received an amiable and interesting explanation respecting Lord Loughborough's retreat, in a letter from his niece, Miss Cotter:—“19th Nov. 1846.—I am sorry to say that my aunt, Lady Rosslyn, being in the constant habit of burning all letters, I have no written documents to produce that would throw any light upon Lord Rosslyn's life. However, I will state my own impression, as derived from my recollection of what passed at the period to which you refer. From all I saw and heard, I believe that George III. was at all times most gracious and kind to Lord Rosslyn, and particularly so at the time of his resigning the Seals, and during the remainder of his life. Lord Rosslyn was sincerely attached to George III.; and this feeling was probably one great inducement to him, after his retirement from office, to exchange his villa at Hampstead for the place he took near Windsor, from whence he had frequent opportunities of paying his duty to his Sovereign, by whom, as well as by all the royal family, he was always received in the most gracious manner. To a man naturally of a sociable and cheerful disposition, there might also be some inducement to this change in the pleasure which the intercourse with the principal

families in the neighbourhood afforded; for they courted his society, and respected and esteemed his character, and he was happy to co-operate with them whenever his health permitted. His kindness to his relations was invariable, and his house was at all times open to them, and to friends of all ages, who were welcomed with cheerfulness; and no one could be in his society without deriving some information from his superior mind, the powers of which were never weakened to the last day of his life, though, from several bodily illnesses, he was in great measure removed from public life.

“In the autumn of 1804 Lord Rosslyn was for some weeks at Weymouth, when he was continually in the society of the royal family, and attended his Majesty in his almost daily sailing excursions, as well as at the parties on shore, in which all his family were included. Their Majesties were so gracious as to admit me to the sailing parties; and in so confined a sphere I had more favourable opportunities of witnessing his Majesty's manner than I could otherwise have had, and his behaviour was at all times such as to give me the impression that he had a great regard and esteem for Lord Rosslyn.”

not continue when the attention was relaxed and its powers enfeebled." <sup>r</sup> But his niece, an Englishwoman, who lived with him under his roof during his retirement till the hour of his death, says: "The statement by Lord Brougham as to Lord Rosslyn's *Scotticisms and vernacular tones*, I can safely affirm to be incorrect; and I believe any one who conversed with Lord Rosslyn in his latter years (of whom some few are still alive) would bear testimony both to his intellects being perfectly clear, and his language so purely English, that no one would have perceived him to be a Scotchman." <sup>s</sup>

He was now to receive a sudden summons from the Angel of Death. On the last day of the year he was at a party given by their Majesties at Frogmore, — where, A.D. 1805. meeting with a very gracious reception, and being consequently in high spirits, he stayed till a late hour. Next day, being New Year's day, 1805, while sitting at table, seemingly in his usual health, his head dropped on one side, he fell from his chair, and it was found that he was struck by an attack of gout in the stomach. He never spoke again, and he expired in a few hours, to the inexpressible grief of his family.

I should have been glad if I could have omitted or contradicted the following anecdote, but it has been too widely circulated to be suppressed, and it seems to rest on undoubted authority: Intelligence being carried to George III. early next morning of the sudden death of his "friend," the Monarch, with characteristic circumspection, interrogated the messenger as to whether this might not be a false report, as he had seen the Earl of Rosslyn himself so recently in perfect health; and the messenger having declared that the Earl had certainly died during the night of gout in the stomach, his Majesty was graciously pleased to exclaim, "Then he has not left a greater knave behind him in my dominions." <sup>a</sup>

<sup>r</sup> Lord Brougham.

<sup>s</sup> Letter from Miss Cotes.

<sup>a</sup> It is related that when Thurlow was told this remark of the King, he vented his spleen against both parties by observing, with an oath, "I perceive that his Majesty is quite sane at present."

The whole story is utterly denied by Miss Cotes, who thus feelingly expresses herself:—"I think it quite incredible that George III., whose benevolence of heart and kind feeling are admitted even by his enemies, could have made such a speech as that recorded at the

end of Lord Brougham's Life, on being told of the sudden death of an old and faithful friend, whom he had seen in his house not twenty-four hours before; or that so open and warm-hearted a man as his nephew Henry Wrottesley, could have refrained from naming it at the time, had such a speech reached his ears, or that he should never at any future time have expressed to any of his own family how much he was shocked at hearing a man, to whom he was most strongly attached, spoken of in such a manner. The extreme improbability of the story is all the

His remains, having been removed to his house in London, were deposited in St. Paul's Cathedral, close to those of Sir Joshua Reynolds. Some of his biographers have stated that a monument has been there erected to his memory, with an epitaph to record his virtues, but "the only memorial which St. Paul's contains of this high legal functionary is a flat stone laid over his grave in the crypt, with the following inscription, on which no human eye ever looks, and which is fast becoming illegible :

**"ALEXANDER WEDDERBURN,  
EARL OF ROSSLYN,  
BARON LOUGHBOROUGH.  
Born 13th February, 1733.  
Died 2nd January, 1805."**<sup>b</sup>

At the top of a circle inclosing the inscription are his armorial bearings, with the motto—

*"Illeso lumine solem."*

Such is the information afforded respecting him to those who visit the secluded vaults of our Metropolitan Minster, and this is now with difficulty deciphered.—I must try to supply the deficiency,—exercising a more impartial judgment than could be expected in a kinsman or a friend.

This memoir, I am afraid, may appear to have been already extended to a disproportionate length, and I hasten to conclude it;—but the reader must bear in mind that while the greater part of those who have held the office of Chancellor have either emerged from obscurity at a mature age or have been consigned to an early tomb, Lord Loughborough was conspicuous on the stage of public life above half a century,

I can argue upon, as Mr. Henry Wrottesley was probably the only person who could really know the truth. I own to me it appears absolutely impossible." Although Miss Cotes's belief is so sincere and so strong, we must recollect that she is not supposed to have been present when the words were spoken, and that they might have been concealed from her on account of her pious respect for the memory of her uncle. I am informed that they were often mentioned to others by Mr. Henry Wrottesley, to whose testimony she refers. The improbability of the anecdote is lessened by the consideration that George III. had always looked on Lord Loughborough with a considerable degree of

suspicion; first, on account of his country, and, secondly, on account of his inconsistent conduct. So early as when he was a law officer of the Crown, his Majesty, in a confidential letter to Lord North, said, "Is Mr. A. G. really running right? I doubt all Scots, and he has been getting every thing he could.

<sup>b</sup> Letter from a Canon Residentiary of St. Paul's, who kindly made the necessary inquiry for me on this subject; and who adds,—"Of our forty-five monuments within the cathedral, twenty-one are erected to military, and sixteen to naval heroes. The only Judge similarly honoured is one whose ashes are not with us—SIR WILLIAM JONES."



mixing with all the most eminent men of two generations,—that he lived to relish the writings of Wordsworth and of Walter Scott, after many years of personal intimacy with Robertson and Hume,—that having exulted in the glories of the first Administration of Pitt the father, he mourned over the calamities of the last Administration of Pitt the son,—and that he long continued to fill a great space in the eyes of his contemporaries on both sides of the Atlantic. From his origin he might have been expected to aim no higher than being an “Advocate-depute” or the “Sherra” of a Scotch county; but, striking out a path to fortune unknown to his countrymen, he raised himself to be Lord Chancellor of Great Britain, and an Earl.—I may still be allowed to take a rapid glance at the merits and the faults of a person so distinguished.

He received from nature talents of the first order, and, with a longing after the seemingly unattainable, an extraordinary determination of purpose, which enabled him to overcome all the difficulties which obstructed his rise. He achieved greatness, and he might have commanded the respect of mankind. But of public principle he was wholly destitute. Repeatedly going over from the Whigs to the Tories, and from the Tories to the Whigs, he has been not inaptly compared to a ship at single anchor in a river, that changes the direction of her prow every time the tide ebbs and flows. Some palliation of his misconduct may be discovered in the political profligacy of the times in which he lived; but, in aggravation, it must be remembered that he had before him in his own profession the example of the virtuous Camden,—amidst temptations and tergiversations, ever consistent and true.

To render Lord Loughborough's worldly prosperity less demoralising, I would observe, that I believe his frequent interested transfers of himself were impolitic as well as unprincipled. With his endowments, had he adhered steadily to either party, he probably would have filled the same offices, and with more power as well as more credit. If in 1771 he had resisted the allurements held out to him by Lord North, he probably would have received the Great Seal from the Whigs in 1782,—and if he had afterwards remained a stanch Tory instead of becoming a Foxite, it would probably have been soon delivered to him by Pitt, when taken from the wayward Thurlow. At all events, what was this bauble, accompanied with reproaches of treachery, and the suspicions and mistrust and equivocal looks of his new friends, compared

to the esteem of good men and the self-respect which he sacrificed to obtain it?

I must likewise censure him for not making himself better acquainted with English jurisprudence. He had a very fine legal understanding, and with proper application he was capable of comprehending and expounding the most abstruse questions debated in our courts; but he was contented with the superficial knowledge of his profession, which enabled him, by means of a cursory examination of authorities and a cautious concealment of his ignorance of all beyond what he had got up for the occasion, decently to get through the business of the day. As a Judge he was of spotless integrity, and he could deal well with the facts of every case; but he was often obliged to resort to others for those maxims on which depended the most important rights of the suitors who came before him for justice. Thurlow used to say,—“That d——d Scotchman has the gift of the gab, but he is no lawyer: in the House of Lords I get Taffy Kenyon, or some one else who does my dirty work, to start some law doctrine in such a way that the fellow must get up to answer it, and then I leave the Woolsack and give him such a thump in the bread-basket that he cannot recover his wind.” Yet Loughborough, by his “gift of the gab,” sometimes seems to have had the best of it. Lord Eldon used to relate that on one occasion when the Chief Justice of the Common Pleas was speaking with considerable effect on a law point which Thurlow had not sufficiently studied, the latter, as he sat on the Woolsack, was heard to mutter, “If I were not as lazy as a toad at the bottom of a well, I could kick that fellow Loughborough heels over head any day in the week.”<sup>c</sup>

Still deeper blame is to be imputed to Lord Loughborough for omitting to do any thing material, during the forty years he sat in Parliament, to improve our laws, and for opposing the efforts which began to be made by others for this great object. Having effected nothing by “Orders” to reform the abuses of the Court of Chancery, the only law reform which he ever introduced, besides that already mentioned, to prevent the dangerous accumulation of property by means of fantastical wills, was the bill requiring, under the pain of nullity,

<sup>c</sup> Thurlow, retaining the recollection of the wounds he had received in conflicts with this formidable antagonist, when told by Lord Lauderdale of his intention to make an

attack on Lord Loughborough, then Chancellor, said to him, “You had better not, sir: he will come over you with his *cold tongue*.”

all annuities to be registered, unless secured on freehold estates. The purpose was to check the ruinous practice of expectant heirs borrowing money on extravagant terms by granting annuities, and thus evading the statutes against usury; but the measure was ill-framed, and has fallen into desuetude.<sup>d</sup> When a bill for altering the criminal law, which had been drawn up by Mr. Wilberforce, came to the House of Lords, Lord Loughborough threw it out, saying, "I cannot help lamenting that men not conversant with law now-a-days turn law projectors, and in fits of vivacity come forward with raw, jejune, ill-advised, and impracticable schemes for alteration of the mode of distributing and carrying into execution the criminal justice of the country. As Attorney-General, I always thought it my duty to check the introduction of every such project. I remember that an offender sentenced to stand in the pillory having lost his life from the fury of the mob, a humane gentleman (Mr. Burke) brought in a bill to make the offence capital, with a view to do away with the punishment of the pillory altogether: but I acted upon the opinion that the Judges were the proper persons with whom alterations in the penal code ought to originate."—He opposed the bill for repealing 25 Geo. 2, which, in cases of murder, subjects the body of the criminal to dissection. "According to my experience," said he, "prisoners hardened in vice, and practised

<sup>d</sup> He likewise caused to be brought in the Act by which a pension of 4000*l.* a year was provided for a retired Chancellor. Mr. Pitt, by the following letter, proposed that he should take a sinecure like his predecessors:—

"Holwood, Sunday, March 2nd, 1794.

"MY DEAR LORD,

"I wish to submit to your Lordship the idea of an arrangement on which I shall be happy to know your sentiments. If it strikes you as it does me, it will be a great satisfaction to me to see it carried into execution. An opportunity occurs of opening the office of Chief Justice in Eyre, now held by Mr. Villiers, the salary of which, as it stands (but subject to some possible deduction), is about 1900*l.* per annum. The office appears to me to be of a description which might very properly be held with your Lordship's present situation, and there is nothing to prevent an additional pension being granted

out of the Civil List, dependent on the event of your ceasing to hold the Great Seal, which might make the amount, in that case, about equal to the salary of a tellership, which has been so frequently the provision for your predecessors. If your Lordship approves of this mode, it appears to be liable to no difficulty, and would render any idea of an application to Parliament unnecessary. You will, perhaps, have an opportunity of turning this in your mind, so as to let me know your opinion when I have the pleasure of meeting you to-morrow.

"Ever, my dear Lord, sincerely yours,

"W. PITT."\*

But he very properly objected to the jobbing to which such bargains were apt to give rise; and Mr. Pitt at last agreed in the propriety of a fixed retired allowance for the Chancellor, which has since been extended to all the Judges,—Stat. 39 Geo. 3, c. 110.

in villany, have stood with a firm countenance during trial, and have even heard sentence of death passed upon them without emotion; but when the Judge informed them that they were to undergo a public dissection, their countenances changed, they grew suddenly pale, trembled, and exhibited a visible appearance of the extremest horror. This sort of exhibition has always made a forcible impression on the minds of the bystanders, and, I have not the smallest doubt, is attended with the most salutary consequences in repressing crime."—He even went so far as to reject a bill to change to *hanging* the punishment of *burning*, to which women were liable for "*coining*," then treated as "*high treason*." "I see no great necessity," said he coolly, "for the alteration, because, although the punishment, as a spectacle, is rather attended with circumstances of horror, it is likely to make a more lasting impression on the beholders than mere hanging; and, in fact, no greater degree of personal pain is thus inflicted, the criminal being always strangled before the flames are suffered to approach her body." But such sentiments reflect discredit on the times rather than the individual. When Loughborough was Chancellor, our penal code, having reached its utmost degree of atrocity, was generally defended and approved. All that can be said against him personally is, that on such subjects he was not in advance of his age. Dr. Parr relates the following anecdote in proof of his humanity: "Lord Rosslyn, disregarding the difference of our political sentiments, at my request gave the fullest effect to my exertions for saving an unfortunate person who had committed the crime for which he was on the point of suffering death, but was guiltless of some aggravations hastily imputed to him, and who, by the diligence, sobriety, and honesty which he has uniformly manifested for the space of twenty-five years from the time of his deliverance, has amply repaid to society the mercy shown to him by the Executive Government." So enthusiastic was the worthy divine, that he adds, "In genius and magnanimity Lord Rosslyn towered above his colleagues."

It is in oratory that Wedderburn is most to be admired; and I am inclined to think that, while in the House of Commons, he was the greatest debater, for a lawyer, that ever sat in that assembly. More sarcastic than Murray, more forcible than Pratt, more polished than Dunning, more conciliating than Thurlow, he combined in himself the great physical and

intellectual requisites for swaying a gentlemanlike mob. His manner was rather too precise, from the pains he had taken with it under Sheridan and Macklin, and from his dread of Scotch phrases or accents; but his voice was powerful and sweet, his eye was full of fire, and, without standing on tip-toe (a vain attempt I have witnessed to add a cubit to the stature of a little man), the movements of his body were so energetic, appropriate, and graceful, that, like Garrick, he seemed "six feet high." Another circumstance which gave him weight in the House of Commons was, that he always remained true to the colours under which he served,—not seeking by display to gain separate objects, or to gratify personal vanity; but, under just subordination to his leader, he seemed only to consider the interests of the party to which, for the time, he belonged. Upon the approach of an important debate he took enormous pains to be master of the subject; he prepared in writing some fine sentences, to be opportunely thrown in when replying; and the story went that he even practised before a looking-glass his starts of surprise at ironical cheers, and his looks of complacency when he expected to be favoured with the sympathy of his hearers. Whatever arts he employed, he was always heard with attention and delight;—controlling the sympathies of his hearers, they for a time forgot his political lubricity. Fox, Burke, and Dunning in turn entered the lists against him without gaining any decisive advantage: he could almost make our quarrel with America appear just, and the war to subdue her well conducted. Perhaps the most striking proof of his great rhetorical powers is the position which he maintained in society notwithstanding what might be stated to his discredit. Though much abused behind his back, all were civil to him in his presence—even his opponents, who were influenced by the hope of a compliment from him in debate, or dreaded the keen edge of his sarcasm.

From his articles in the original Edinburgh Review, when a very young man, it might have been expected that he would have gained distinction as an author; but he had not imbibed his friend David Hume's passion for literary fame, and he preferred office, titles, and riches. Lord Commissioner Adam, indeed, says in the Diary which I have before quoted, "He had produced an historical work which never met the light, although he had taken great pains to correct it—a Dissertation on the Reign of Henry II. of England;"—and there is

reason to think that he printed anonymously several political pamphlets; but the only publication ever avowed by him was a little treatise which came out in the year 1793, soon after he received the Great Seal, entitled "Observations on English Prisons, by the Right Honourable Alexander Lord Loughborough, Lord Chancellor of Great Britain." It had probably been written when he was Chief Justice of the Common Pleas, and it contains the result of his inquiries and observations as a Criminal Judge. Certainly it does him very considerable credit.

A charge has been brought against him, which, while it would deeply wound his honour, would place him in the first class of English writers. The astounding notion that he actually was the assailant in the "Daily Advertiser" of the Duke of Grafton, Sir W. Draper, the Duke of Bedford, Lord Mansfield, Sir W. Blackstone, and George III., receives countenance from Chalmers;\*—and thus writes Sir Nathaniel Wraxall: "During many years of his life I nourished a strong belief, approaching to conviction, that the late Chancellor, then Mr. Wedderburn, was the author of Junius. Some persons of credit have recognised the handwriting of the letters to be that of Mrs. Wedderburn, his first wife." The supposed similitude of handwriting in this case amounts to nothing, and the only other circumstance I am aware of to support this strange supposition is, that Junius is uniformly partial to George Grenville, who was Wedderburn's patron. But although an anonymous libeller in the newspapers might, by way of blind, have mentioned his own name with some discourtesy, could he have thus disclosed his selfish system of political warfare,—“The wary Wedderburn never threw away the scabbard, nor ever went upon a forlorn hope”?—or could he have passed sentence of perpetual infamy upon himself in such stinging epigrammatic language as this, to be fixed in every man's memory,—“As for Mr. Wedderburn, there is something about him which even treachery cannot trust”?—or could he have tried to mitigate the odium to be cast upon the individual by thus reflecting on his country: “I speak tenderly of this gentleman, for when treachery is in question, I think we should make allowances for a Scotchman”? Although Junius loves to dabble in law, and with the assistance he received could treat a legal question plausibly for the uninitiated, it is quite clear, from the mistakes into which he

\* Biographical Dictionary.—“LOUGHBOROUGH.”

falls, that he was not a professional lawyer.<sup>f</sup> Thus, in his Address to the English Nation, speaking of the House of Commons, he says, "They are only *trustees*, the *fee* is in us." Now those who are of the craft all know that the fee is in the trustee, not in the "*cestui que trust*," or person beneficially interested. Besides, there is a case against Francis as the real Junius, which would convict him before any fair and intelligent jury. One would suppose that the writer was of higher rank than a clerk in the War Office, and that he had been instigated to his calumnies against the renowned statesmen of the day by personal rivalry, personal wrongs, and personal resentments; but there is overwhelming evidence to prove that Sir Philip delivered the MS. to Woodfall, and though the letters are certainly superior to any of his acknowledged compositions, there is a family likeness to be discovered among them all; and after his departure for the East Indies, when Junius disappeared, he never again wrote under such excitement, and with such occasions for giving unrestrained vent to his malevolence. No weight can be attached to his denial, supposing it to have been ever so peremptory, instead of being faint or equivocal; for, independently of the personal risk which would have arisen to him, even late in life, from an avowal of his slanders, no man of right feeling, or with any regard to his estimation in society, would submit to the moral disgrace of being considered the author of these letters, for all the literary glory they would confer upon his name.<sup>g</sup>

<sup>f</sup> There is strong internal evidence from Shakspeare's plays to support the statement that he had been bred up in an attorney's office. He frequently makes use of law terms, and always with the most exact propriety—from his "*finer and recoveries*" to his "*action of battery*." I do not yet despair of writing an Essay on this *lego-literary* subject.

<sup>g</sup> See "Junius Identified," by JOHN TAYLOR, Esq. I can still further refute the supposition that Wedderburn was Junius, and prove that Sir Philip Francis was the man, by the following letter from Lady Francis, his very amiable and intelligent widow, which she was good enough to write for my information, and which I have her permission to publish. After numerous compliments to "the high character of Lord Campbell's work," she thus proceeds:—"Sometime I have doubted whether I had a right to betray what Sir Philip never would have confessed,

and which I could only have obtained the conviction of from his confidence in my discretion, which made him lay aside with me that guard over himself and that strict watch over every word which he felt necessary, but which was often irksome to him *auprès du monde*. I believe that was the secret of his attachment and marriage so late in life—like the wife of Midas, he wanted some one to whisper the secret to, and I was his reed, as all dutiful consorts ought to be to their lords; yet though his manner and conversation on that mysterious subject were such as to leave me not a shadow of doubt on the fact of his being the author, telling me circumstances that none but Junius could know, he never avowed himself more than saying he knew what my opinion was, and never contradicting it. Indeed, I made no secret of it to him, though not in a way that called for any declaration either way; but I am certain he would not have allowed me to

During the discussions in the House of Lords on the Regency, the Duke of Richmond strongly intimated that Lord Loughborough had been writing abusive articles in the news-

contious in error, if it had been one, knowing my convictions. His first gift after our marriage was an edition of Junius, which he bid me take to my room, and not let it be seen, or speak on the subject; and his posthumous present which his son found in his bureau was 'Junius Identified,' sealed up and directed to me. Sir Philip never did any thing unadvisedly. Edmund Burke observed of him, 'He does nothing without a reason; there is thought and motive in all he does, however trifling.' You know Burke and he were inseparables till the former left the Whigs; but their mutual regard, I believe, always continued. Sir Philip told me that Burke was convinced he was Junius; yet, before he was himself suspected, that is, before the 'Identification' came out, some people discussing the question before him, asked him if he thought Burke was the writer, as was generally believed at the time: — 'Faith, very likely,' answered Sir Philip, 'for I heard him, and considered it an ingenious evasion, like his answer to Sir Richard Philips, which he took the trouble to explain to me was no denial, and said "only fools could take it for one." He was very anxious to avoid either assent or denial, lest he might implicate truth or honour—both of which he was very jealous of committing. He affronted poor Sam Rogers, whom he liked much, to avoid an ensnaring question. On the 'Identified' appearing, he withdrew his name from Brookes's, when almost the father of the club, and petted and privileged by all. They treated him not to desert them, and several wrote to beg my intercession; but all in vain; he retired and made no sign. On consideration, I found the cause. A club is neutral ground: it was not like the Select Society, and protection of his own or his friends' houses, and he might have been liable to meet with indiscreet or embarrassing questions. Junius could never have preserved his incognito for so many years, from the time all London was on his traces, through what I am convinced was his detection, being most wished by the enemy, and for near thirty years after, and still have left the world in doubt, had he not, like a skilful chess-player, seen many moves before him; and I firmly believe, such was his skill, that through the whole he was never re-

duced to a falsehood in terms. In all this I recognize Sir Philip Francis, as if I had looked into his heart all the time. But you will say, 'Why all this fear of discovery, so many years after, when the passions he excited and the hearts they inflamed had long been cold in the grave?' I will tell you, in answer, what I collected from what he allowed me to discover,—for so long as I asked no questions, he would give me much curious information, as of a third person,—from which I select the following for Lord Campbell's satisfaction or amusement;—prefacing, that my inferences were known and contradicted by Sir P. You know that he and Philip Rosenhagen were declared by Dr. Thicknesse, the master of St. Paul's School, to be the cleverest boys he ever educated; at twelve and thirteen years old he used to associate with men at a table d'hôte at Slaughter's Coffeehouse, when his father dined with the great; at seventeen, he was Latin Secretary to Lord Chatham, then to an Embassy, then to General Bligh, then clerk in the War Office, where he thought himself ill treated. He was at the Court of France in Louis the Fifteenth's time, when the Jesuits were driven away for offending Madame Pompadour; yet people say, at twenty-nine years old to thirty-two he was too young, and could not have gained the lofty tone to be the writer of these Letters, which bear all the stamp of what he must have been at that age, or even younger; but the fire and energy of youth lasted in him even when mature in experience and knowledge, and this union of youth and age not tempered by each other, but both in their extreme, is equally characteristic of Francis and Junius. The former passed his first years with his grandfather the Dean of Leighlin, John Francis, who was a man highly considered in Ireland. Philip was an only and idolised son; he took the lead of his competitors at school, gaining the gold medal there. He was early accustomed to the lofty language and high thoughts of Lord Chatham, who he told me always treated him with consideration, discerning, no doubt, a spirit within worthy of an appearance greatly in his favour. Nor were the discussions his patron often carried on with his colleagues thrown away, when he was present, on the young Secretary. So



papers against the Queen, and seems to have alluded to the notion then current that he was the author of the Letters of Junius. Thus he answered the charge: "I do assure the

brought forward in the world, besides an innate loftiness of character, and a touch of Hotspur in him that would 'pluck bright honour from the pale-faced moon, or dive into the bosom of the deep' for it; when, therefore, he felt himself treated as a mere clerk in office, deprived of the promotion he expected, and even neglected by Lord Chat-ham, he wanted no stronger stimulus; but, well aware of all the errors of Government which he had been trying to reform or stigmatise\* under different signatures for some time, his energy was roused, and vented itself in the first letter of Junius. And here let me remark, that a writer who fears discovery should not write too much under one signature. He becomes at length an individual—a character—a living person,—and adds so much to the danger of detection, that nothing but presence of mind, courage, and forethought, like Sir Phillip's, could parry it. This first letter, which was a kind of general attack and challenge, was intended and succeeded in bringing out a champion: the shield was struck and the combat commenced! Sir W. D. gallantly wore no vizor; but Junius did not imitate him; this was an advantage to him; but it was an embarrassment that Sir W. knew his father well, and himself slightly. This made him wish to close their controversy; and when his talents had been fully apparent in the castigation the K. B. had received, a new and powerful ally came to his assistance. Whether he knew that Junius was Francis I cannot say, nor whether he did more than slightly supply some facts that he could not have obtained without such aid: that some of the letters were anmitted to him before they appeared, I have no doubt. Perhaps I have no right to mention that person's name; for Sir Phillip was so anxious to guard it, that I had no doubt he had given his honour that the discovery should never come from him; nor did it; but he was not bound to volunteer an untruth if another found it out. When Junius says, 'I am the sole depositary of my own secret, and it shall die with me,' I have no doubt he meant something

that was like his reply to Sir R. P. It might be a necessary evasion. Silence, sometimes, is consent. From the year 1805 to the end of 1818, I was either in constant correspondence with Sir P. or was his wife. Most of those beautiful letters were destroyed, as he would have his returned at the end of each year; but some few were spared at my earnest request. If these ever appear, they will make the world do him more justice. The situation he had in India, given by Government, of course involved a condition that he should never be known. The King certainly told General Désargues-tiers—'We know who Junius is; he will write no more.' I believe it was hoped he would see home no more; two out of the three colleagues never did, and his return was all but a miracle. Had Hastings and Francis been the same height, the ball must have gone through the heart of the latter. Do not think it too severe to say, that Hastings, who was an excellent shot, did not intend to make that common mistake of measuring the heart of another by his own. Remember what one of Mr. H's friends said in the House of Lords, and another in the House of Commons: the false account Hastings gives of the nature of the wound looks very like conscience. The determination Mr. H. showed to make Francis challenge him, or lose his honour,—submitting to such an insult as no Irish or English gentleman ever did,—shows, in so crafty a man, that he had prepared for his own security in every way. He was sure that Francis did not wish that his antagonist should fall by his hand; as, while Impey was chief criminal Judge in Bengal, F. was certain, in that case, to have soon followed Nundcomar. No one that had any observation could be a member of Sir P.'s family without seeing that there was the 'volto sciolto, petto stretto' in perfection—not in his character, but produced by habit and necessity. Many men have many secrets, but they are by nature cautious,—sometimes timid. Sir Phillip was daring and open on every other subject; but if the slightest thread of his web were touched, he

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\* "The nation pays all these officers, not the King: he is paid himself, and all have duties to perform to the paymaster before all others."

noble duke that I have never contaminated my hands with any connection with a newspaper. I disdain to taint my character with any such connection. Formerly newspapers contained effusions of wit, candid remarks on public affairs, and compositions which ingenious minds might delight in; but of late the common contents of newspapers have been dull, uninteresting narrative, or violent personal abuse—dark and malignant insinuations, and foul calumny and aspersion. The reason obviously is the impunity with which such liberties are suffered to be taken with the character of individuals, and the gross and vulgar appetite of the public for scandal.”<sup>b</sup> I believe his disclaimer. Newspapers were then in the lowest state of degradation. In a former age their credit had been supported by the lucubrations of Steele and Addison, of Bolingbroke and Pulteney; and now, in England as in France, newspapers are conducted by men of education and honour, and no one would deem it any imputation on his character to be supposed to have contributed to them; but in Lord Loughborough’s time, pamphlets were considered almost the only medium for reputable political discussion, and the periodical press seems to have been nearly abandoned to men who violated the sanctity

was instantly on guard; not to me, certainly; yet he even kept within the compact that must have passed between the man who, he says, in a character of Fox, was the best tempered public man he ever knew. Some circumstances he always regretted. One was losing the fame of being known; and, even if discovered, it might be said he had sold his power of guarding the liberties and rights of his country. Old people have told me that we have no idea of the sensation Junius created at the time in remote little towns. The postman would call out, as he rode through the streets, ‘A letter from Junius to-day!’ and all who took in the *D. A.* were besieged with requests. I must do Sir P. the justice to believe that he was driven into the measure of giving up the character, that is the name, of Junius; but, though the conditions were both honourable and lucrative, he had to give up no principles or friends: he had not to approve the men and measures he once denounced; the most honourable of all offices was given to him; and his colleagues, perhaps, think the lights I have given you sufficient to justify my belief. Had any circumstance contradicted it, I would have candidly stated it. Had Sir P. once said to me, ‘I am not the writer of Ju-

nus’s Letters,’ I should have given up the belief immediately. He would no more have volunteered a falsehood to me than he would have had the meanness of even leaving me in doubt; since it would be stealing more than the purse (that, indeed, is trash compared to fame) were he not Junius; and when the ‘Junius Identified’ came out, without mischief to the assumed Junius, the *real one might* have appeared; and then his whole conduct to me must have appeared a studied deceit. He went once so far as to tell me that the truth will be known some time; and you remember the lines which I believe soothed him when he felt he had given up the purest of ambitions. Please to use what evidence you think would tell on a subject I can have no doubts on.”

<sup>b</sup> 27 Parl. Hist. 1092. In this speech he says, that, having been calumniated, “he had acted in an open, manly way, and resorted to the laws of his country for redress;” but I cannot find any account of the proceeding he refers to, and I do not know even whether it was by action or criminal prosecution. I should be exceedingly obliged to any courteous reader who would furnish me with any information respecting it.

of private life, and subsisted by the propagation of scandal and calumny. The evil once begun was continued in an aggravated shape, as long as it was considered that any one "contaminated his hands by a connection with a newspaper."

I can find no "sayings" of Lord Loughborough worth repeating. He did not seek, like Thurlow, to gain distinction by a display of his colloquial powers; and, thinking of the superior *éclat* to be obtained by a brilliant speech in *Parliament*, he was contented with being rather obscure in the *salon*. According to some accounts, he submitted to this necessity after having found by experience that his genius did not fit him for talk. Boswell, having told us that Johnson, in allusion to Lord Mansfield, had said, "It is wonderful, Sir, with how little real superiority of mind men can make an eminent figure in public life," thus proceeds: "He expressed himself to the same purpose concerning another law lord,<sup>1</sup> who it seems once took a fancy to associate with the wits of London; but with so little success that Foote said, 'What can he mean by coming among us? He is not only dull himself, but the cause of dulness in others.' Trying him by the test of his colloquial powers, Johnson had found him very defective. He once said to Sir Joshua Reynolds, 'This man has been ten years now about town, and has made nothing of it;' meaning, as a companion. He said to me, 'I never heard anything from him in company that was at all striking; and depend upon it, Sir, it is when you come close to a man in conversation that you discover what his real abilities are: to make a speech in a public assembly is a knack.'" The Biographer observes in a note, which, as well as the above criticism, must have been read by the subject of it and made him wince:—"Knowing as well as I do what precision and elegance of oratory his Lordship can display, I cannot but suspect that his unfavourable appearance in a social circle, which drew such animadversions upon him, must be owing to a cold affectation of consequence from being reserved and stiff."

He seems hardly ever to have attempted wit or humour,—for which, indeed, some thought he was utterly disqualified by his country. He had grievously offended Miss Burney, by objecting to the Brangtons in her *Evelina*, as being "too low and vulgar;" but she forgave him "in consideration of his being a Scot, and therefore like a blind man criticising colours."

<sup>1</sup> Evidently Loughborough, though not named.

One "*mot*" by him is to be found in the "Memoirs of a Sexagenarian," and it does not much heighten our regret that it has not a *pendant*. "Beloe was once reading to him from Park's book of Travels in Africa the following adventure:— 'My guide, who was a little way before me, wheeled his horse round in a moment, and calling out something in the Foulah language which I did not understand, I inquired in Mandingo what he meant. "*Wara, belli, belli*,—a very large lion," said he, and made signs for me to ride away. But my horse was too much fatigued; so we rode slowly past the bush from which the animal had given us the alarm. Not seeing any thing myself, however, I thought my guide had been mistaken, when the Foulah suddenly put his hand to his mouth, exclaiming, "*Soubali an allahi!*—God preserve us!" and, to my great surprise, I then perceived a large RED LION at a short distance from the bush, with his head crouched between his fore-paws.' On hearing the last part of the sentence, Lord Rosslyn laughed heartily, and exclaimed with good humour, 'I suppose it was THE RED LION OF BRENTFORD.'"

He was more felicitous in mimicking the self-laudatory style of Erskine. "The egotism of that pleader," says Miss Burney, "is proverbial, and so happily was his manner hit, rather than caricatured, by the Chancellor, that the audience deemed his inventive faculty a mere exercise of memory. Giving an account of a supposed public meeting, Erskine, he said, opened to this effect:—'As to me, gentlemen, I trust I have some right to give my opinion freely. Would you know whence my title is derived? I challenge any man among you to inquire! If he ask my birth—its genealogy may dispute with kings! If my wealth—it is all for which I have time to hold out my hand! If my talents—no! of these, gentlemen, I leave you to judge for yourselves!'"<sup>k</sup>

If not highly appreciated by Johnson, Foote, and others, who devoted the energies of their minds to conversation, he continued through life to be the chosen companion of men of the highest intellectual eminence. There was much private intimacy between him and Fox and Sheridan while they were associated in politics, and the third great historian who arose in the reign of George III. honoured him not less than the other two. Gibbon in his Autobiography, long after his gratitude for having obtained a seat at the Board of Trade through

\* This seems to have been the origin of the egotistic speech ascribed to Erskine in the "Anti-Jacobin."

Loughborough's interest was moderated, mentions him in terms of the highest personal regard; and when driven back to England from Lausanne by the armies of France, a few weeks before his death, he thus wrote to Lord Sheffield to excuse the imprudence of which he had been guilty, in going into society while in a weak state of health:—"The man tempted me, and I did eat; and that man is no less than the Chancellor. He recalls me (the third time this week) to a dinner to-morrow, with Burke and Windham, which I did not possess sufficient fortitude to resist."

Although so early stigmatized by the well-remembered lines of Churchill,—in the latter part of his life I find few poetical notices of him for good or for evil. Having been a stanch Whig while the contributors to the "Rolliad" were amusing the town, he is neither celebrated in the text of that exquisite Epic, nor introduced as the author of a Probationary Ode. He had the good luck likewise to be on the same side in politics as the "Anti-Jacobin," so that he escaped the cutting jests of Canning, Ellis, and Frere.

He was not the patron of men of genius, like Somers and Talbot, but the Great Seal had not yet been disassociated from all that is elegant and liberal. If a time should hereafter come when the holder of it shall never think of any thing beyond his paper of causes,—however well he may dispose of that for the benefit of the suitors,—a heavy blow will be given not only to the dignity but to the permanent usefulness of our "order;" and the profession of the law, hitherto affording scope for noble ambition and generous rivalry, will, like any mechanical trade, be a scramble for employment and for money. Lord Loughborough made the acquaintance of all the distinguished men of letters who appeared in his time—invited them to his table, and was ready to do them a good turn. He advised Maurice, the author of "Indian Antiquities," to dedicate his book to Mr. Pitt, who, amid many high qualities, was lamentably deficient in the encouragement of literature; and, finding that this homage to power produced nothing beyond a coldly civil speech, he himself solaced the disappointed dedicator with a handsome gratuity and a comfortable post for life in the British Museum.<sup>m</sup> He very freely assisted with his purse Fearne, Hargrave, and other lawyers

<sup>m</sup> It is said that Mr. Maurice, attending in Downing Street to present a copy of his book, with thanks for the honour of being permitted to dedicate it to so great a man, Pitt replied, "The honour, sir, was to me," and bowed him out.

of profound learning and slender practice; but, what I consider still more meritorious, he was always eager to serve those who were not "mere lawyers," but could combine with jurisprudence a taste for *belles lettres*, for metaphysics, or for political science.

The munificent homage which he was ready to pay to  
 Aug. 31, genius was most honourable to him. He offered to  
 1794. contribute to relieve the embarrassment of Mr. Burke's affairs before the pension was granted to that extraordinary man for his writings against the French Revolution. Dr. Lawrence, in a letter to Lord Loughborough, from Beaconsfield, announcing this grant, says:—"Knowing the confidence which throughout this business he has placed in your Lordship's kind offices, I thought it just to inform him how nobly you had answered that confidence by the intimation which you gave me, and had before given Dr. W. King, of your readiness to be privately of service to his affairs, had it been necessary."

He was not very lucky in the Judges whom he made; but he might be without blame, for they had enjoyed some eminence at the bar, and no one can certainly foretell how the most distinguished advocate will conduct himself on the Bench."

He is lauded for the distribution of his ecclesiastical patronage, being desirous of giving away preferment so that the parishioners might be satisfied—perhaps remembering the force given in his own country to a "call" when he was a Ruling Elder of the Church of Scotland. Yielding to the applications of friendless men of merit, he would say to them, "Go to my secretary, and desire him to prepare the presentation for my *fiat* immediately,—or I shall be pestered by some Duke or official man whom I shall not be able to refuse." He used to observe—what, from my own experience

"I do not think that he, like his successor Lord Eldon, could excuse any nominations to high judicial offices by the solicitations of the Royal Family; although it would appear, from the following warm letter of thanks to him, that he had made a Commissioner of Bankrupts at the request of the then Duchess of Gloucester:—

"Gloucester House, Feb. 25, 1801.

"The highest gratification a good mind can receive must be the reflection of having diffused happiness. Such must be your Lordship's present sensation; for you have,

by your late noble appointment of George Roots, rendered *that* family perfectly happy, and, I really believe, as perfectly grateful. The father trotted to town as soon as he heard it, and his overflowing eyes were the best expressions of gratitude he could show.

"For suffering me to have some share in promoting the felicity of these good people, you must, my dear Lord, permit me to subscribe myself

"Your Lordship's most sincerely obliged  
 and unsisterable and grateful friend,

"MARIA."

on a more limited scale, I can easily believe to have been true—"that his large livings gave him little comparative trouble, their designation being either anticipated or easily determined; but that for his small livings he had always a multitude of applications, and seldom or never one without at least seven small children to back it."

The father of Lord Nelson, a venerable clergyman, wished to resign, in favour of his youngest son, a living, the patronage of which belonged to the Chancellor; and the gallant Admiral thus at once fired a shot at him:—

"141, Bond Street, October 12, 1797.

"MY LORD,

"In addressing a letter to you, some persons may think me wrong, and that I ought to have chosen the interference of a friend; but feeling a conviction that, if what I have to ask is proper for your Lordship to grant, I require, on the present occasion, no interest but your own opinion of my endeavours to serve the state. I therefore enclose my request, which, if your Lordship has the goodness to comply with, will be a small provision for the youngest son of my venerable father, and a lasting obligation conferred upon

"Your most obedient servant,

"HORATIO NELSON."

The following was the becoming answer:—

"SIR,

"You have judged perfectly right in the mode of your application to me; any interference would have much diminished the satisfaction I feel in acknowledging the perfect propriety of your request, and the just title your great services have gained to every mark of attention which, in the exercise of public duty, it is in my power to express.

"Yours, &c.

"LOUGHBOROUGH."

In spite of his services to the Church, it has been asserted that he was without religion, and that shortly before his death he was converted to Christianity by reading Burgh on the "Divinity of our Lord,"—which might have been a good cure for heterodoxy, but could not have been prescribed for infidelity. We are further told, that he must have been sceptically inclined from his early intimacy with David Hume. But there is not the smallest reason to doubt that Robertson, and other distinguished literary characters in Scotland, deploring the ingenious errors of the author of the "Essay on

Miracles," were themselves steady believers in the truths of revelation. Lord Loughborough never gave offence to the most pious by any thing he said or did, or omitted to do; and notwithstanding a gossiping letter from the Reverend Mr. Gisborne to Mr. Wilberforce, the writer of which must have misunderstood the gentleman on whose information he spoke,\* I see no ground for doubting that he was from his youth upwards a sincere Christian, although he might not believe that there is no salvation for any who have not received the sacraments from a priest episcopally ordained—a favourite doctrine of his detractors.

His morals were certainly unimpeachable; and, both in his own family and in his intercourse with society, he displayed not only courtesy of manner and evenness of temper, but kindness of heart. Foolish stories were circulated about his being given to play, his being threatened with executions, and his being obliged to pawn his state-coach; but, although he was fond of expense, he never exceeded his income, and although he did not accumulate money to purchase large estates for his heir, he left an ample provision for all those who were dependent upon him.

His portraits represent him with regular features, a fine aquiline nose, and a mouth bespeaking much intelligence. I myself can testify that in his old age he had a handsome as well as dignified presence. Yet at a former period, when he was much subject to obloquy, not only was there said to be "famine in his face," but he was, among other things, reproached for *ugliness*; and, to give point to this charge, the assertion was loudly made that he took delight in admiring himself in the looking-glass. Mrs. Piozzi tells us that, having mentioned in the presence of Dr. Johnson this ridiculous propensity which distinguished Lord Loughborough and Mr. Caton, the great timber merchant,—likewise very ill-favoured,—he defended them, and thus moralised the subject in a manner truly Johnsonian: "They see reflected in that glass, men who have risen from almost the lowest situations in life,—one to enormous riches,—the other to every thing this world can give,—rank, fame, and fortune. They see likewise men who have merited their advancement, by the exertion and improvement of those talents which God has given them; and I see not why they should avoid the mirror."

\* Townsend's *Eminent Lawyers*, vol. i. 236.



Lord Loughborough, although twice married, had no issue by either marriage; and his honours, according to the limitation I have referred to, devolved at his death on his nephew General Sir James St. Clair Erskine, who filled several high offices in the state in the reigns of George IV. and William IV. The Chancellor is now worthily represented by James Alexander, third Earl of Rosslyn, the gallant Colonel of the 9th regiment of Dragoons, and late Master of her Majesty's Buck-hounds.

I could not with propriety conclude this memoir without giving the reader an opportunity of correcting my balanced estimate of the character it portrays by the severer strictures of others. "Lord Rosslyn," says Sir Egerton Brydges, "appeared to be a man of subtle and plausible rather than of solid talents. His ambition was great, and his desire of office unlimited. He could argue with great ingenuity on either side; so that it was difficult to anticipate his future by his past opinions."

He is still more roughly handled by one of his successors—most highly qualified, no doubt, to observe and to delineate his faults as well as his virtues:—"It is the imperative duty of the historian," says Lord Brougham, "to dwell upon the fate, while he discloses with impartial fulness, and marks with just reprobation, the acts of such men; to the end that their great success, as it is called, may not mislead others, and conceal behind the glitter of worldly prosperity the baser material with which the structure of their fortune is built up. This wholesome lesson, and indeed needful warning, is above all required when we are called upon to contemplate a professional and political life so eminently prosperous as the one which we have been contemplating, which rolled on in an uninterrupted tide of worldly gains and worldly honours, but was advanced only by shining and superficial talents, supported by no fixed principles, illustrated by no sacrifices to public virtue, embellished by no feats of patriotism, nor made memorable by any monuments of national utility, and which, being at length closed in the disappointment of mean, unworthy desires, ended amidst universal neglect, and left behind it no claim to the respect or gratitude of mankind, though it may have excited the admiration or envy of the contemporary vulgar." <sup>p</sup>

Much of this censure is well deserved, but I think it may be mitigated by considering that Lord Loughborough was distinguished by lofty aspirations, as well as amiable sentiments; and that he was free from faults and follies which have made other occupiers of the "marble chair" odious & ridiculous.

## CHAPTER CLXXVI.

LIFE OF LORD CHANCELLOR ERSKINE FROM HIS BIRTH TILL HE WAS  
CALLED TO THE BAR.

I RESERVE Lord Loughborough's immediate successor for the conclusion of my work. After a short suspension of Lord Eldon's Chancellorship, it was prolonged above twenty years under George III., under the Regency, and under George IV. He lived down to the reign of Queen Victoria, and he took an active part in politics long after he quitted office—strenuously opposing the repeal of the Test Act, Catholic Emancipation, the Reform Bill, and the other measures which have placed our institutions, for good or for evil, in the condition in which we now behold them. The rival to whom he yielded for a brief space, nearly closed his public life—so brilliant, so useful to his country—when forced to resign the Great Seal in 1807, amidst cries that the *Church was in danger*, because it had been proposed that Roman Catholics might hold in the army the rank of field officer. It will, therefore, be more convenient that I should now proceed with the Life of this illustrious advocate and patriot.

I confess that I am impatient to behold him, and to attend him in his extraordinary career, as he ever engaged the affections as well as excited wonder and applause—from the time he learned “Shantrews” in the dancing school at St. Andrew's, till he presided on the Woolsack at the trial of Lord Melville. Since I accompanied to the tomb the venerable Camden, I have passed through many disagreeable scenes with the dull Bathurst, the overbearing Thurlow, and the faithless Loughborough. I have before me a long journey in the society of Eldon, with whom, notwithstanding his great abilities, profound learning, and delightful manners, I must often quarrel for his selfishness and insincerity, as well as for his bigotry. The subject of this memoir commands my love and my respect. He had imperfections, to which I am not blind, and which I shall not attempt to conceal: but he displayed genius united with public principle; he saved

the liberties of his country; he was the brightest ornament of which the English Bar can boast; and from his vivacity, his courtesy, and his kindness of heart, he was the charm of every society which he entered.

On the 10th day of January, 1750, in a small and ill-furnished room in an upper "flat" of a very lofty house in the old town of Edinburgh, first saw the light the Honourable Thomas Erskine, the future defender of Stockdale, and Lord Chancellor of Great Britain.<sup>a</sup> He was the youngest son of Henry David, tenth Earl of Buchan, and counted in his ancient line many distinguished ancestors. The Erskines' are said originally to have been "of that ilk," deriving their name territorially from the domain of "Erskine" on the banks of the Clyde,—but they were so early ennobled, that Lord Hailes says "the title of Marr, which they bore, is one of those titles the origin of which is lost in their antiquity: it existed before our records, and before the æra of genuine history." MARTACUS, the first Earl of Marr, of whom authentic mention is made, was contemporary with Malcolm Canmore and William the Conqueror. James Erskine, a younger son of James the seventh Earl of Marr, and grandson of the Regent Marr, married the heiress of the Earldom of Buchan, which had existed in the time of William the Lion, and, being descendible to females, had passed through the Stuarts, the Comyns, and other illustrious Scottish houses. Thereupon he had a new charter limiting it to his "heirs male and assigns whatever," and he is called the "sixth Earl of Buchan." He and his descendants wasted the ample patrimony once belonging to the title,—and in the middle of the 18th century, Henry David, the tenth Earl, with a numerous offspring, was reduced to an income of 200*l.* a year.<sup>b</sup> However, his Countess, daughter of Sir James Stewart of Goodtrees in the county of Mid-Lothian, Baronet,

<sup>a</sup> The houses in Edinburgh, some of them sixteen stories high, were then let in stories, or "flats," as houses in Paris now are.

<sup>b</sup> The name was variously spelt "Ereskin," "Airskin," and "Areseskin." Voltaire, in his Letters on the English Nation, writes it "Hareskins." The common pronunciation in Scotland is "Askin," which gave rise to an often-told repartee of the famous Henry Erskine. A silly fellow at the Scotch Bar, not liking a question put to him by the witty Dean of Faculty, testily said, "Harry, I never

meet you but I find you *Askin*;" to which he replied, "And I, Bob, never meet you but I find an *Anser*."

<sup>c</sup> It is curious to observe, that notwithstanding the strict law of entail in Scotland, which is so injurious to the country, the nobles there have fallen into poverty much more than in England, where family estates are either unfettered, or are preserved by settlements made with the joint consent of father and son in each succeeding generation.

was a woman of extraordinary intellect, which had been highly cultivated, and she was equally remarkable for eminent piety and for peculiar skill in housewifery. The family had been obliged to abandon an old castle standing on the last remnant of their estates, for the elevated but wretched habitation I have mentioned, in the metropolis of Scotland, —where their poverty could be better concealed and their children might be cheaply educated. The Countess herself taught them to read, and was at great pains to instil into their infant minds the doctrines of the true Presbyterian faith. The Erskines were reckoned a most “godly” race. The Earl’s great grandfather had suffered in the Covenanting cause in the preceding century; and those pious men, Ralph and Ebenezer Erskine, who had recently seceded from the Establishment, and whose sentiments have been adopted and acted upon by the Free Church of Scotland, were his “far-away cousins.” Not only was the house frequented by the eloquent divines who then flourished in Edinburgh, but by the leaders of the “Parliament House,” and by members of other families almost as noble and almost as reduced,—who came to partake of “a social dish of tea,”—so that young Tom, from his infancy, saw society well calculated to form his manners and to sharpen his intellect. He is said early to have discovered that buoyancy of spirit and playfulness of fancy which afterwards distinguished him. For some years he was kept at the High School of Edinburgh, still—according to the Scottish usage, which is attended with many advantages—eating his meals at home, —having oatmeal porridge for breakfast, and soup maigre, called “kail,” for dinner. While he remained here he was generally “Dux” of his class, although he was pretty frequently subjected to the discipline of the “tawse.”

With all Lady Buchan’s economy and good management, the metropolis was found too expensive for the very slender finances of the family, and in the beginning A.D. 1762. of the year 1762 they removed to St. Andrew’s, in the county of Fife, where house-rent was lower, and where they could entirely abstain from receiving company—the education being nothing inferior. Of Tom Erskine, at this period of his life, I can speak from undoubted authority; for he was in the same class with my own father, and with George Hill, afterwards Principal of St. Mary’s College, my preceptor, both of whom I have frequently heard talk of him. They described him as of quick parts and retentive memory, rather idly inclined,

but capable of great application—full of fun and frolic—and ever the favourite of his master and his playmates.

There is extant a very interesting letter, written by him while a school-boy here, to his eldest brother, Lord Cardross, who had been left behind with a relation at Edinburgh:—

“August 11, 1762.

“MY DEAR BROTHER,

“I received your letter, and it gave me great joy to hear that you were in health, which I hope will always continue. I am in my second month at the dancing-school. I have learned *shantrews*<sup>\*</sup> and the single *hornpipe*, and am just now learning the *double hornpipe*. There is a pretty large Norway ship in the harbour: the captain took Harry and me into the cabin, and entertained us with French claret, Danish biscuit, and smoked salmon; and the captain was up in the town seeing Papa to-day. He is to sail on Friday, because the stream is great. Yesterday I saw Captain Sutherland exercise his party of Highlanders, which I liked very well to see. In the time of the vacation Harry and me writes themes, reads Livy and French, with Mr. Douglas, between ten and eleven. Papa made me a present of a ring-dial, which I am very fond of, for it tells me what o'clock it is very exactly. You bid me, in your last letter, write to you when I had nothing better to do; but, I assure you, I think I cannot employ myself better than to write to you, which I shall take care to do very often. Adieu, my dear brother, and believe me, with great affection,

“Yours,

“T. E.”

At the grammar school of St. Andrew's, under Mr. Hacket, A.D. 1762—  
1763. a zealous teacher, but not much of a scholar, he attained only a moderate proficiency in Latin, and learned little of Greek beyond the alphabet. But he was carefully taught to compose in English, as if it had been a foreign language; and, being fond of books, he read, in a desultory way, many English poems, plays, voyages, and travels. He never was matriculated in the University of St. Andrew's,<sup>†</sup> but in the session 1762-3<sup>\*</sup> he attended the Mathematical and Natural Philosophy classes, taught by pro-

<sup>†</sup> The same *saltatory* course prevailed when I was at St. Andrew's. The name and dance of “shantrews” some ascribe to a Highland origin,—some to our ancient allies the French. The memory of Lady Buchan was then green, and I was shown a cave on the sea-shore in which she used to drink tea, and make her toilette when she bathed—still

called “Lady Buchan's Cove.”

<sup>\*</sup> This I have ascertained by the assistance of Sir David Brewster, Principal of St. Leonard's and St. Salvador's—at present the great ornament of that seat of learning.

<sup>\*</sup> The session begins in November and ends in May

fessors of considerable eminence, and from them he imbibed the small portion of science of which he could ever boast.

With a seriousness not to be expected from his years or his disposition, he began to consider how he was to make his way in the world, and he expressed a wish to be bred to some learned profession, in which he might distinguish himself. His father and mother truly told him, however, that they could not afford this expense, as their means were entirely exhausted in sending his eldest brother, Cardross, to study at Leyden, and educating his second brother, Henry, for the Scotch Bar; and that they could do nothing better for him than send him to sea as a midshipman. Being earnestly bent on mental improvement, and having a particular aversion to the sea service,—if he must serve his Majesty, he prayed that a commission in the army might be procured for him. After a correspondence between his father and some old friends of the family, this point seemed to be conceded in his favour. Under that belief he wrote the following letter to his aunt, Lady Stewart, which I think is much to be admired for the ingenuous feelings and noble aspirations which it discloses :—

“Nov. 4, 1763.

“MY DEAR AUNT,

“I received your letter about a week ago with great pleasure, and thank you for the good advice contained in it, which I hope by God’s assistance I shall be able to follow.

“I am extremely glad that you approve of my not going to sea. I shall tell my reasons for it.

“In the first place, Papa got a letter from Commodore Dennis, laying before him the disadvantages at present of the sea service on account of the many half-pay officers on the list, which all behoved to be promoted before me : he also acquainted Papa that he was sorry that if I did go he could be of no service to me, as he had at present no command, and had no prospect of getting any : he at the same time did not forget the advantages of it ; but when I weighed the two in scales, the disadvantages prevailed, and still more when added to my own objections, which are as follow :—In the first place, I could have no opportunity of improving my learning, whereas in the army the regiment is often quartered in places where I might have all advantages. I assure you I could by no means put up without improving myself in my studies, for I can be as happy as the day is long with them, and would ten times rather be at St. Andrew’s, attending the classes there, and even those which I was at last year, viz. Natural Philosophy and Mathematics (both of which I am extremely fond of), than at the most beautiful place in the world, with all manner of diversions and amusements. My second objection is,

that I would be obliged to keep company with a most abandoned set of people that would corrupt my morals; whereas in the army, though they be bad enough, yet I should have the advantage of choosing my company when I pleased, without being constrained to any particular set;—and thirdly, I think my constitution would not agree with it, as I am very subject to rheumatic pains.<sup>y</sup> [Then follow some little family matters and messages.]

“I shall now conclude with assuring you that I am, my dear aunt, your most affectionate nephew,

“THOMAS ERSKINE.”<sup>z</sup>

However, a commission could not be obtained without purchase, and the original intention of sending him to  
A.D. 1764. sea was resumed. The case being properly stated to him, he submitted—fully resolved, under all circumstances, however adverse, to struggle for the acquisition of knowledge, and the development of his intellectual powers. In the spring of the following year it was arranged that he should be put under Sir David Lindsay, an experienced sea-captain, in command of the Tartar man-of-war. This officer, on the recommendation of his uncle, the Earl of Mansfield, who took an interest in the Buchan family, promised to be kind to the “young middy.”

The lad being supplied with his blue jacket, cocked hat, and sword, was almost reconciled to his fate. Embarking at Leith, he took an affecting leave of his family, to whom he was very tenderly attached, and from whom he had not before been separated. His father he never again beheld alive, but his mother survived to encourage his entrance into a profession more suitable to his taste and his talents, and to witness the commencement of his brilliant career.

He left his native land with the disheartening prospect of dying a half-pay lieutenant;—but when he next revisited it he was an ex-Chancellor, a Peer, and a Knight of the Thistle—what was far more valuable, he had achieved for himself the reputation of the greatest forensic orator that Britain ever produced.

It is wonderful to think that the period of life, during which almost all those whose progress to greatness I have traced were stimulated to lay in stores of knowledge at public

<sup>y</sup> These rheumatic pains were probably indicative of a constitutional tendency to the gout, of which his father and mother both afterwards died, and of which he himself had a smart attack three years after the date of

this letter, at the age of eighteen—the first and last visit of this hereditary complaint.

<sup>z</sup> Communicated to me by his son, the Right Hon. Thomas Erskine.



schools and universities, was passed by Erskine in the hold of a man-of-war, or in the barracks of a marching regiment. But his original passion for intellectual distinction was only rendered more ardent by the difficulties which threatened to extinguish it.

He remained in the Tartar four years, cruising about in the West Indies and on the coast of America. The A.D. 1764-1768. life of a midshipman has been much improved of late years by superior comforts, and by anxious attention to professional and general education while he is afloat; but in Erskine's time the interior of a man-of-war presented nearly the same spectacle which we find described in so lively a manner by *Roderick Random*,—and the young officers were taught little else than to smoke tobacco, to drink flip, and to eat salmagundy. Erskine, however,—never neglecting his professional duties,—contrived often to escape from the dark and noisy abode of the midshipmen to a quiet corner of the vessel, where he amused and improved himself in reading books which he had brought on board with him—picking up some new volume at every port he visited. He was soon reconciled to his situation—and his elastic spirits and gay temperament made him not only take a deep interest in the new scenes which presented themselves to him, but be pleased with all he saw. Joining in the gay dances of the negroes,—when he and they forgot their toil and their stripes,—he formed a favourable notion of slavery as a *status*, which influenced him after he became a member of the legislature, and he was so warm an admirer of the open, straightforward, light-hearted, brave, though thoughtless and indiscreet, character of English seamen, that he would not hear of any plan for rendering them more sober and orderly on shore, saying, “You may scour an old coin to make it legible; but if you go on scouring, it will be no coin at all.”<sup>a</sup>

One letter which he wrote at this time from Jamaica to his eldest brother is preserved, and, by its artless touches, shows the attachment he still retained to home, notwithstanding the *couleur de rose* medium through which he viewed foreign lands:—

“The longer I stay in the West Indies I find the country more healthful and the climate more agreeable. I could not help smiling when Mamma mentioned in her letter, ‘how much reason you had to be

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<sup>a</sup> Armata.

thankful that you gave up your commission, or you would have gone to the most wretched climate on the earth.' I don't know, indeed, as to the rest of the West India Islands; but sure I am, if you had come here, you would have no reason to repent of it. To be sure to stay here too long might weaken a constitution, though hardly that; but to stay here some time is extremely serviceable. . . . I be in now to draw indifferently. I am studying botany with Dr. Butt, so I will bring home drawings of all the curious plants, &c., and every thing that I see. I have sent Mamma home a land turtle, to walk about Walcot garden: it is very pretty, particularly its back, which is all divided into square lozenges, and the shell is as hard as a coat of mail."

Sir David Lindsay, his captain, who behaved to him with great kindness, was replaced by Commodore Johnson. The "harsh demeanour" of this officer has been assigned as the reason for Erskine quitting the sea service—but this statement is incorrect, for, although his manners were rather rough, "Tom" was a favourite with him, and was appointed by him acting-lieutenant. In this capacity the future Chancellor made the voyage home to England,—reckoning with confidence on his promotion being confirmed, and hoping to rival Anson and Hawke. But, alas! on his arrival at Portsmouth the ship was paid off, and he was told at the Admiralty that on account of the great number of midshipmen who had served longer than him, and whose friends were applying for their advancement, he could not yet have a lieutenant's commission, and there was no saying when his turn might come. He indignantly vowed that he would not again go to sea as a midshipman after having served as lieutenant.

While in perplexity as to his future destiny, he had the misfortune to lose his father. The old Earl died at Bath, where he had been for some years a resident, and had been a regular attendant at Lady Huntingdon's Chapel, established there under the ministry of the famous Whitfield. From this enthusiast we have a very striking account of his obsequies,—the future Chancellor appearing in the group of mourners: "All has been awful, and more than awful. On Saturday evening, before the corpse was taken from Buchan House, a word of exhortation was given, and a hymn sung, in the room where the corpse lay. The young Earl with his hand on the head of the coffin, the Countess-dowager on his right, Lady Anne and Lady Isabella on his left, and their brother Thomas next to their mother, with a few friends. On Sunday morn-

ing, all attending in mourning at early sacrament, they were seated by themselves at the foot of the corpse, and with their servants received first, and a particular address was made to them." Having mentioned the preparations for the second service at eleven the same day, when Whitfield himself was to preach the funeral sermon, he continues:—"The coffin being deposited on a space railed in for the purpose, the bereaved relations sat in order within, and their domestics outside the rail. Three hundred tickets of admission, signed by the present Earl, were given to the nobility and gentry. Ever since there hath been public service and preaching twice a-day. This is to be continued till Friday morning;—then all is to be removed to Bristol, in order to be shipped for Scotland." The following was the pious inscription on the coffin:—

"His life was honourable—his death blessed.  
He sought earnestly peace with God;  
He found it  
Alone in the merits of our Saviour."

These solemnities made an impression on the mind of the young midshipman which was never effaced. But he was now obliged, with the advice of his surviving parent, to determine upon the course of life he was to pursue.

He had reached his eighteenth year, when, according to the common routine in England, he ought to have been going to commence his studies at Oxford or Cambridge. Most happy would he have been to do so, but the pittance which came to him under his father's will was quite insufficient to maintain him at an English university, and his talents had not yet sufficiently displayed themselves to justify the hope that he might triumph over the formidable obstacles he would have to encounter if he should study for the Bar. He resolved, therefore, to try his luck in the army; and, through the recommendation of John Duke of Argyll, Colonel of the "Royals," or "First Regiment of Foot," he obtained an ensign's commission in that corps at the regulation price,—which absorbed the whole of his patrimony.

Of the first two years of his military life I find no account. During this time the regiment was quartered in different provincial towns at home, and we can only conjecture that the sprightly ensign, when he was not at drill, or carrying the colours on a field-day, employed himself in reading books which he borrowed from circulating libraries, and flirting

with the pretty girls in the neighbourhood. He fell in love with one of these, who was luckily of respectable family and connections, though without fortune—the daughter of Daniel Moore, Esq., M.P. for Marlow; and on the 21st of April, 1770, he led her to the altar.

This imprudent match turned out auspiciously. They lived together in uninterrupted harmony. Become a married man, he, without abating any thing of his outward gaiety, thought more deeply, and was capable of more determined application to business, than would have been possible for him if he had only had himself to care for.

The Royals were soon after ordered to Minorca, then under the dominion of the British Crown; and thither his wife accompanied him. For two long years was he shut up in this island; but they were the most improving he ever spent; and it may be doubted whether his mind would have been better cultivated if he had devoted them to mathematics or the Greek measures, in hopes of a high degree on the banks of the Cam. Laboriously and systematically he went through a course of English literature. Milton was his chief delight, and “the noble speeches in PARADISE LOST may be deemed as good a substitute as could be discovered by the future orator for the immortal originals in the Greek models.”<sup>b</sup> He was, likewise, so familiar with Shakspeare, that he could almost, like Porson, have held conversations on all subjects for days together in the phrases of this great dramatist. Dryden and Pope,—nearly laid aside, by the rising generation, for the mawkish sentimentality now alone allowed to be poetry,—he not only perused and re-perused, but got almost entirely by heart. He likewise showed the versatility of his powers by acting as chaplain to the regiment, the real chaplain being at home on furlough by reason of ill health. At first he contented himself with reading the service from the Liturgy; but he found that this was not altogether relished by the men, who were chiefly Presbyterians. Thereupon, his mind being imbued with the religious notions implanted in it by his mother and the godly divines whom she patronised, he would favour them with an extempore prayer; and he composed sermons, which he delivered to them with extreme solemnity and unction from the drum-head. He used always to remember and to talk of this portion of his life with peculiar satisfaction.<sup>c</sup>

<sup>b</sup> Lord Brougham.

brother officer who served with him in the

<sup>c</sup> The following anecdote, related by a Royals, has recently been communicated to

While at Minorca he was much noticed by the Governor, General Mostyn; and he highly approved of the <sup>A.D. 1770-1772.</sup> conduct of that officer in imprisoning and banishing Fabrigas, the Minorquin, accused of plotting against the English Government. It is well known that there was no sufficient ground for these severities, and that, an action having been brought to recover a compensation for them in the Court of Common Pleas at Westminster, the plaintiff secured a verdict with 3000*l.* damages. Erskine, in his old age, gave the following account of his indignation, at a time when TRIAL BY JURY would by no means have been selected by him as his motto:—

“I well remember the news coming out to Malta of the verdict in the cause of Fabrigas and Mostyn. I was then in the garrison, and we all took the side of our worthy and popular Governor, whom we thought very ill used; and we drank that day at the mess a hearty damnation to the jury who brought in that verdict.

“Getting warm with indignation and wine, I lampooned the jury after dinner in some extempore verses, little thinking I should ever have any thing to say to a jury myself.

“I forget exactly how they ran; but the idea was, that the ghost of great Alfred came from the abodes of the blest, to survey the result of the institutions he had founded when in life; and I supposed him present at the verdict of the jury against Governor Mostyn. The concluding verses were these:—

“The monarch’s pale face was with blushes suffused,  
To observe right and wrong by twelve villains confused,  
And, kicking their \*\*\*\*\* all round in a fury,  
Cried, ‘*Curs’d be the day I invented a jury!*’”<sup>d</sup>

The regiment returned from Minorca in 1772, Erskine being still an ensign; and he had leave of absence for near six months. The greatest part of this time he spent in London, where his high-born relations received him very kindly, and introduced him into general society. Making quite a sensation in town by his agreeable manners and graceful volubility, he was well received in the most distinguished literary circles. Often he enlivened the assemblies of Mrs. Montagu, frequented by Dr. Johnson, Sir Joshua Reynolds, the Bishop of St. Asaph, Dr. Burney, and other celebrated wits of that day.<sup>e</sup>

me:—“His first sermon appeared so wonderfully good, that he was suspected of having stolen it. He thereupon desired that he might have a text given him, and that he might be shut up in a room alone without any book, promising within a specified time to produce as good a sermon. The experiment was made,

and within the specified time he produced a sermon on the subject assigned to him, allowed to be still more eloquent and edifying.”—*3rd Edition.*

<sup>d</sup> See Fabrigas v. Mostyn, Cowper, 161

<sup>e</sup> Wraxall’s Memoirs, i. 152.

Boswell, in his inimitable "Life of Johnson," *ad ann.* 1772, says, "On Monday, April 6, I dined with him at Sir Alexander Macdonald's, where was a young officer in the regimentals of the Scots Royals, who talked with vivacity, fluency, and precision, so uncommon that he attracted particular attention. He proved to be the Honourable Thomas Erskine, youngest brother to the Earl of Buchan, who has since risen into such brilliant reputation at the Bar in Westminster Hall." It appears that, after the example of David and Goliath, the ensign ventured to combat the literary giant. A controversy arising about the respective merits of the authors of "Tom Jones" and "Clarissa;" and Johnson pronouncing Fielding to be "a blockhead" and "a barren rascal," and saying "there is more knowledge of the heart in one letter of Richardson's than in all Tom Jones,"—Erskine objected: "Surely, sir, Richardson is very tedious." He received only this answer, which, I think, is not very satisfactory: "Why, sir, if you were to read Richardson for the story, your impatience would be so much fretted, that you would hang yourself! But you must read him for the sentiment, and consider the story as only giving occasion to the sentiment." The ensign then—showing an early instance of his egotistic propensity,—to the amusement and with the goodwill of the company, gave them a detailed account of his occupations in Minorca, and told them with particular glee how he read prayers and preached to the regiment.<sup>f</sup> He afterwards rather rashly objected to a passage in Scripture, where we are told that the Angel of the Lord, in one night, smote 185,000 Assyrians. "Sir," said Johnson, "you should recollect that there was a supernatural interposition; they were destroyed by pestilence. You are not to suppose that the Angel of the Lord went about and stabbed each of them with a dagger, or knocked them on the head man by man."<sup>g</sup>

<sup>f</sup> Mr. Croker, in his edition of Boswell, says,—“Lord Erskine was fond of this anecdote. He told it to the Editor the first time he had the honour of being in his company, and often repeated it, with an observation that he had been a sailor and a soldier, was a lawyer and a parson. The latter he affected to think the greatest of his efforts; and, to support that opinion, would quote the prayer for the clergy in the Liturgy, from the expression of which he would (in no commendable spirit of jocularly) infer, that the englightening them was one of the greatest

marvels that could be worked.”—But any one might have remarked, without offence, that, upon a revision of the Liturgy, this introduction of the prayer for the clergy might be amended. The Right Hon. Thomas Erskine, in a letter to me, observed,—“His laugh at the prayer for the clergy showed no irreverence for religion, but was meant as a joke upon the Episcopacy, against which his mother, a strict Presbyterian, had always entertained the strongest prejudice.”

<sup>g</sup> Boswell, ii. 177.

Erskine now came forward as an author, and published a pamphlet, with the following title-page:—

"OBSERVATIONS  
on the  
PREVAILING ABUSES  
in the  
BRITISH ARMY,  
arising from the  
CORRUPTION OF CIVIL GOVERNMENT;  
with a  
PROPOSAL to the OFFICERS  
Towards obtaining an Addition to their Pay.  
By the Honourable .....,  
An Officer.

'Si omnes volumus, quod arguimur, non distinguemus voluntatem à facto: Omnes plectamur.'—*Tit. Liv. lib. xiv.*"

The style of the Subaltern is much more stately and sententious than that afterwards assumed by the Chancellor; but in this production there breathes that ardour of sentiment which distinguished the author through life. A few specimens will be found amusing. Thus he starts off:—

"There is no task more difficult than to combat, with success, abuses of long standing; they borrow the appearance of right from immemorial custom, and it is almost impossible to rouse men to acute feelings of sufferings and oppressions, of which they themselves have not seen or felt the beginnings.

"But evils are still more insurmountable when their removal demands a steady and prompt unanimity in extensive communities. The various interests and opinions of men defeat the completion of this most powerful engine of human force; and great reformatations are consequently either the fruits of long and often frustrated labour, or the birth of fortunate accidents.

"There may be, perhaps, two causes of the many feeble, ill concerted, and worse supported attempts towards an augmentation of the pay of the British troops, which seem now to be so submissively or indolently laid aside, and the grievance, with many others, so patiently supported, that to offer new proposals on the subject cannot but carry with it the air of Quixotism.

"But as attempts that have been deemed unwarrantable from improbability of success, have often been found to be very easy on trial, and their apparent difficulties to be only the bugbears of irresolution; ardent, enterprising spirits are sometimes eminently useful as pioneers to regular and sober industry. Men who have virtue and talents for executing work which is put into their hands have not always fertile and progressive inventions, but treat every thing as impossible and chimerical which presents any glaring difficulties; and the world would stand still, and every species of improvement be at an end, if nature did not

provide another set of men, of irritable and restless dispositions, fretful under grievances, and ambitious of being the instruments of public advantage.

"It is this disposition, and perhaps this ambition, which lead me to address myself to the officers of the British army, to demonstrate to them how shamefully, from the present miserable establishment of their pay, and other glaring abuses, they are cut off from their share in the prosperities of Great Britain; to show to them how far this insulting misfortune is owing to their absurd neglect of their own advantages, and to rouse them to a spirited yet constitutional demand of the rights of the most useful and laborious citizens.

"At first view, this may appear to be a dangerous subject, and highly incompatible with the arbitrary principles of military government. What is termed remonstrance in a citizen is supposed to be mutiny in a soldier; but mutiny I apprehend to be confined to the breach of discipline and subordination in an inferior towards a superior in military command: soldiers do not give up their general rights as members of a free community; they are amenable to civil and municipal laws, as well as to their own martial code, and are therefore entitled to all the privileges with which a free form of government invests every individual; nay, it is to their virtue that all the other parts of the community must ultimately trust for the enjoyment of their peaceable privileges; for, as Mr. Pitt (now Lord Chatham) in his strong figurative eloquence expressed himself in Parliament, 'To the virtue of the army we have hitherto trusted; to that virtue, small as the army is, we must still trust; and without that virtue, the Lords, the Commons, and the people of England may entrench themselves behind parchment up to the teeth, but the sword will find a passage to the vitals of the Constitution.'"—He afterwards goes on to show that, from the low pay of the army, none but the cadets of high families and persons of great wealth can enter it; and asks whether these men often deserve the honourable title of soldiers. "A commission," says he, "and a tour through Italy, are the finishing strokes to modern education; they are undertaken with the same serious intentions, and are prosecuted with equal improvement. So long as the battalions are encamped on native plains, or ensconced in peaceful barracks, so long these sons of riot and effeminacy maintain their posts. The brilliant orbit of Ranelagh glows with their scarlet, and the avenues of Vauxhall glitter with blades, drawn against unarmed apprentices in the honour of a strumpet,—which rust in their scabbards when their country calls. If for a review or a muster they are obliged to loll in their *vis-à-vis* to the quarters of their regiment, it is but to inflame the contempt and hatred of the people of England against the defenders of their peaceable privileges. They gallop again to town, after having filled the country with such horror at their debaucheries that hospitable doors are shut against officers of principle and reputation.—Such are the advantages which the military profession reaps from these apes in embroidery; such are the heroes that in the event of a war must lead the British troops to battle, for these men rise almost universally over the



heads of officers grey with fatigues and rough with scars,—whose courage and abilities yet preserve the honour of the English name,—who, without money and without interest, languish in the subaltern ranks, unknown and unrespected,—who, after having braved all the terrors and calamities of war, and immortalised their country, sink into obscure graves, unwept and unremembered; without a tongue to speak their worth, or a stone to record their virtues. It is only upon the useful and valuable part of the army that all its grievances fall. To the stripling of the peaceable parade it is the limbo of vanity; to the veteran of the field it is a path sown with thorns."

In the same strain the pamphlet goes on at great length to point out abuses, and to call upon the injured officers A.D. 1773. to join together in obtaining a remedy, which he assures them they may safely do without danger of being punished for mutiny. From the excellent condition in which the army now is, under our illustrious Commander-in-chief, the Duke of Wellington,<sup>5</sup> we are not necessarily to suppose that these complaints are much exaggerated. The American war breaking out soon after, the army was found to be in a very defective state, and the public derived considerable advantage from Erskine's suggestions for its improvement. This pamphlet had a wide circulation: the name of the author was well known, although it did not appear in the title-page; and he acquired much celebrity by the boldness and eloquence with which he had pleaded for his profession.

Having been some time the senior ensign in his regiment, on the 21st of April, 1773, he was raised to be a lieutenant. The pleasure of promotion speedily passed away, and he became more and more dissatisfied with his situation and his prospects. He was again moving about with his regiment from one country town to another. This mode of life had lost the charm of novelty which once made it endurable, and was now become doubly irksome from his having to keep a wife and family in a barrack-room, or in lodgings, the expense of which he could ill afford. He had no money to purchase higher commissions, and he might wait many years before he gained another step by seniority. Notwithstanding some disputes with the American colonies, there was thought to be a probability of long and profound peace. He considered himself fit for better things than the wretched existence that seemed lengthening before him—to be spent in listlessness and penury.

It so happened that, in the midst of these lucubrations, the

assizes were held in the town in which he was quartered. The  
Aug. 1774. lounging lieutenant entering the court in his regimentals, Lord Mansfield, the presiding judge, inquired who he was, and, finding that this was the youngest son of the late Earl of Buchan, who had sailed with his nephew, invited him to sit on the bench by his side, explained to him the nature of the proceedings that were going forward, and showed him the utmost civility. Erskine heard tried a cause of stirring interest, in which the counsel were supposed to display extraordinary eloquence. Never undervaluing his own powers, he thought within himself that he could have made a better speech than any of them, on whichever side he had been retained. Yet these gentlemen were the leaders of the circuit, each making a larger income than the pay of all the officers of the Royals put together,—with the chance of being raised by their own abilities to the Woolsack. The thought then suddenly struck him that it might not even now be too late for him to study the law and be called to the Bar. He saw the difficulties in his way, but there was no effort which he was not willing to make, no privation to which he would not cheerfully submit, that he might rescue himself from his present forlorn condition,—that he might have a chance of gaining intellectual distinction,—above all, that he might make a decent provision for his family. Lord Mansfield invited him to dinner, and, being much struck with his conversation and pleased with his manners, detained him till late in the evening. When the rest of the company had withdrawn, the Lieutenant, who ever showed high moral courage, in consideration of the connection between the Murrays and the Erskines, and the venerable Earl's great condescension and kindness, disclosed to him his plan of a change of profession, with a modest statement of his reasons. Lord Mansfield by no means discouraged him; but advised him before he took a step so serious to consult his near relations.

He accordingly wrote to his mother, and she, justly appreciating the energy and perseverance as well as the enthusiasm belonging to his nature, strongly advised him to quit the army for the law. His brothers did not oppose—although Henry warned him of the thorny and uphill path on which he was entering. His resolution was now firmly taken, and he came up to London to carry it into effect. It was not till the spring of the following year that financial difficulties

were so far removed as to render it possible for him to make the experiment. Craddock says,—“At the House of Admiral Walsingham I first met with Erskine and Sheridan, and it was there the scheme was laid that the former should exchange the army for the law:” but he had not been made acquainted with the previous consultations, or he would have said that “the plan was there *matured*, and the arrangements were made for his legal studies and his call to the Bar.” The period of five years was then required by all the inns of court for a student to be on the books of the Society before he could be called—with this proviso, that it was reduced to three years for those who had the degree of M.A. from either of the universities of Oxford or Cambridge. It was resolved that Erskine should immediately be entered of an inn of court; that he should likewise be matriculated at Cambridge and take a degree there; that he should keep his academical and law terms concurrently; and that, as soon as it could be managed, he should become a pupil to some eminent special pleader, so as to be well grounded in the technicalities of his new craft.

Accordingly, on the 26th day of April, 1775, he was admitted a student of Lincoln's Inn;<sup>a</sup> and on the 13th <sup>A.D. 1775—</sup>of January, 1776, he was matriculated at Cambridge, <sup>1778.</sup> and entered on the books of Trinity College as a Fellow Commoner,<sup>i</sup> with the privilege of wearing a *hat*. He had rooms in college, in which he resided the requisite periods to keep his terms, but, being entitled to a degree without examination, he paid no attention to the peculiar studies of the place. He despaired of becoming a great classical scholar, and he never either had or desired to have more than the slightest tincture of science which he had acquired at St. Andrew's. But he still assiduously applied to English *belles lettres*, and practised English composition both in verse and prose. He gained some applause by a burlesque parody of Gray's “Bard.” The author had been prevented from

<sup>a</sup> “Lincoln's Inn.—The Honourable Thomas Erskine, third son of the Right Honourable Henry David Earl of Buchan, is admitted into the Society of this Inn on the 26th day of April, in the fifteenth year of the reign of our Sovereign Lord George the Third, by the grace of God of Great Britain, France, and Ireland King, Defender of the Faith, &c., and in the year of our Lord 1775; and hath thereupon paid to the use of this Society the

sum of three pounds three shillings and fourpence.—Admitted by

“J. Cox.”

<sup>i</sup> “Jan. 13, 1776.—Admissus est Socio-commensalis Thomas Erskine, filius Henrici Davidis, Comitis Buchan, defuncti in academia Sancti Andreæ sub præsidio Magistri Dick, olim institutus ann. 1745. Mag. Collier et Atwood, Tut.”

taking his place at dinner in the College Hall by the neglect of his barber, who failed to present himself in proper time to trim the *ails de pigeon*, without which no one could then appear in public. In the moment of supposed disappointment, hunger, and irritation, the bard pours forth a violent malediction against the whole tribe of hair-dressers, and in a strain of prophetic denunciation foretells the overthrow of their dynasty in the future taste for cropped hair and unpowdered heads. He carried off the prize given by the College for English declamation. To this academical distinction he referred with complacency in his defence of Paine:—"I was formerly called upon, under the discipline of a college, to maintain these truths, and was rewarded for being thought to have successfully maintained that our present Constitution was by no means a remnant of Saxon liberty, nor any other institution of liberty, but the pure consequence of the oppression of the Norman tenures, which, spreading the spirit of freedom from one end of the kingdom to the other, enabled our brave fathers, not to reconquer, but for the first time to obtain, those privileges which are the inalienable inheritance of all mankind." In June, 1778, he took the honorary degree of A.M.

While still a student at Cambridge he contrived to keep his terms at Lincoln's Inn. He had not yet actually quitted the army, having obtained six months' leave of absence. It is said that during Easter and Trinity Terms he excited a great sensation in the dining-hall by appearing with a student's black gown over the scarlet regimentals of the Royals, probably not having a decent suit of plain clothes to put on. He obtained a supply of cash by the sale of his lieutenancy on the 19th of September, 1775.\*

As soon as it was practicable, he became a pupil in the chambers of Mr. Justice Buller, with whom he afterwards acted the famous scene in the trial of the Dean of St. Asaph; and when this great special pleader was made a judge, he entered himself with another not less celebrated, George Wood, afterwards made a Baron of the Exchequer, with whom he wisely continued nearly a year after he was called

\* I received this information, almost with the celerity of the electric telegraph, from my right hon. friend the present Secretary at War, accompanied by the following note:—

"My dear Campbell,—In your next volume

pray *laud* the alacrity and regularity of the W. O., which can give you in two hours information regarding the sale of a commission seventy-one years since.—Yours truly,

"F. MAULE."

to the Bar, attending to the sage counsel of Littleton to his son, which ought to be impressed on the mind of every man who wishes to succeed in the profession of the law:—"Et sachez mon fitz que un des pluis honorables, et laudables, et profitables choses en nostre ley, est daver le sciens de uñ pleder en accions realx et personalx et pur ç ieo toy coñseil especialmèt de mettř tout ton corage et cure ce d'apprendř." <sup>m</sup>

Erskine never did become a profound jurist, but along with his lively imagination he had a logical understanding, and by severe application at this period <sup>n</sup> he made the respectable progress, which several who have been pushed high in our profession have never reached, of being able thoroughly to comprehend any question of law which he had occasion to consider—to collect and arrange the authorities upon it, and to argue it lucidly and scientifically.

When Erskine was at Cambridge no such debating society as the "Union" had been established; but when settled in London, he was in the habit of taking part in the debates of the Robin Hood, Coachmakers' Hall, and other spouting shops, which, according to the custom of the time, were attended by shoemakers, weavers, Quakers, law students, and Members of Parliament, each person paying sixpence, and being entitled to a glass of porter or a glass of punch, and in which there is said to have been often a display of high oratorical powers.

During the three years which followed his retirement from the army, notwithstanding the kind assistance of some of his friends, he was in great pecuniary straits. He had an increasing family to maintain, besides defraying his own expenses as a Cambridge undergraduate and a student of law. Exercising the strictest economy and the most rigid self-denial, he often found it a sore matter to provide for the day which was passing over him. But, with a sanguine disposition and a fixed determination of purpose, these difficulties only stimulated him to more vigorous exertion, that he might finally subdue them. "He had taken lodgings in Kentish Town, and would occasionally call for his wife at the house of a connection who kept a glass shop in Fleet Ditch, and used to talk of him as *our Tammy*." <sup>o</sup>

<sup>m</sup> Lit. s. 534.

<sup>n</sup> I have several of his commonplace books then compiled, showing great industry and perseverance.

VOL. VIII.

<sup>o</sup> Townsend's Life of Erskine, on the authority of Mr. Pensam, the friend and Secretary of Bankrupts of Lord Eldon. The Right Hon. T. Erskine says, "The connection at

Jeremy Bentham, who had kept up an intercourse with him since the publication of his pamphlet on the Abuses of the Army, speaking of him at this time, says,—“I met him sometimes at Dr. Burton’s. He was so shabbily dressed as to be quite remarkable. He was astonished when I told him I did not intend to practise. I remember his calling on me, and, not finding me at home, he wrote his name with chalk on my door.”

Reynolds, the comic writer, in his “Life and Times,” relates that at this time the villa of his father, an eminent solicitor at Bromley in Kent, was frequently visited by Erskine, of whom he gives the following lively description:—“The young student resided in small lodgings near Hampstead, and openly avowed that he lived on cow-beef because he could not afford any of a superior quality,<sup>p</sup> dressed shabbily, expressed the greatest gratitude to Mr. Harris for occasional free admissions to Covent Garden, and used boastingly to exclaim to my father, ‘Thank fortune, out of my own family I don’t know a lord.’”<sup>q</sup>

But suddenly he was to be the idol of all ranks of the community, and to wallow in riches. Such a quick transition from misery to splendour is only equalled in the Arabian Nights, when the genii of the wonderful lamp appeared to do the bidding of Aladdin. A sunrise within the tropics displays some fleeting crepuscular tints between utter darkness and the full solar blaze, and therefore cannot be used to give a just notion of Erskine’s first appearance to the dazzled eyes of the British public.

whose house he is supposed (ex relatione Pensam) to have called was, I suspect, Mr. Moore, a jeweller on Ludgate Hill.”

<sup>p</sup> I have often heard that he used to say that at this time he lived on “cow-beef and

tripe.”

<sup>q</sup> This speech is very characteristic of the vanity which, under the guise of humility, he was accustomed to exhibit.

## CHAPTER CLXXVII.

CONTINUATION OF THE LIFE OF ERSKINE TILL HE ENTERED THE HOUSE OF COMMONS.

ERSKINE was called to the Bar by the Honourable Society of Lincoln's Inn on the 3rd day of July, 1778, in the end of Trinity Term;<sup>r</sup> but not having completed <sup>A.D. 1778.</sup> his special-pleading discipline, he continued working in the chambers of Baron Wood, and he might be considered as *in statu pupillari* till near the end of Michaelmas Term following. The 24th of November in that term was the critical day in his life, and exhibited the most remarkable scene ever witnessed in Westminster Hall.

Notwithstanding his agreeable manners, he seems to have made hardly any connections to be of use to him. No attorney or attorney's clerk was as yet aware of his merit. But he had one retainer which came to him by an accident much like Thurlow's in the Douglas cause. Captain Baillie, a veteran seaman of genuine worth, having for his services been appointed Lieutenant-Governor of Greenwich Hospital, discovered in that establishment gross abuses, by which those entitled to its advantages were defrauded. He presented successively petitions to the Directors, to the Governors, and to the Lords of the Admiralty, praying for inquiry and redress. Meeting with no attention from any of them, he printed and circulated a statement of the case, detailing the real facts of it without any exaggeration, and reflecting with great but just severity upon Lord Sandwich, First Lord of the Admiralty, who, for electioneering purposes, had placed

<sup>r</sup> "Lincoln's Inn.—At a Council there held the 3rd day of July, in the eighteenth year of the reign of our Sovereign Lord King George the Third, and in the year of our Lord 1778,—Ordered, that the Honourable Thomas Erskine, one of the Fellows of this Society, having been regularly admitted to the Degree of Master of Arts in the University of Cambridge, and being thereby of

full standing of this Society, according to the order of the 30th of June, 1762, and having kept twelve terms' commons, and conformed himself to the rules of this Society, be called to the Bar, on paying all his arrears and duties, and that he be published at the next Exercise in the Hall."

He was made a Benchler in 1785; and Treasurer of the Society in 1795.

in the Hospital a large number of landmen. Captain Baillie was immediately suspended by the Board of Admiralty. Lord Sandwich himself did not venture to appear openly as a prosecutor, but, instigated by him, several of the inferior agents who had likewise been animadverted upon, although in much less severe terms, at the end of Trinity Term applied for and obtained from the Court of King's Bench a rule to show cause, in Michaelmas Term following, why a criminal information should not be filed against the author for a libel upon them. During the long vacation, Captain Baillie and Erskine, who had never seen each other before, met at a dinner party.\* The Greenwich Hospital case, which had excited extraordinary interest, being mentioned, Erskine, not knowing that Captain Baillie was at table, entered upon it with glee, and, fired with the indignation which he really felt, inveighed with much eloquence against the corrupt and tyrannical conduct of Lord Sandwich. Captain Baillie, finding out that he was a young lawyer just called to the Bar, who himself had been a sailor, swore that he would have him for one of his counsel. They parted without being introduced to each other; but the next day, while Erskine was sitting in his chambers in a fit of depression, and thinking that all his labour and sacrifices might be vain, as there seemed so little prospect of his ever having any opportunity to gain distinction,—a smart knock came to his door, and a slip of paper was brought to him with the words written upon it,—

"KING'S BENCH.

THE KING v. BAILLIE.

Retainer for the Defendant,

THE HONOURABLE THOMAS ERSKINE,

ONE GUINEA."

and a yellow golden guinea was actually put into his hand.†

\* The Right Hon. Thomas Erskine sends me the following account of his father casually becoming acquainted with this first client:—"The circumstance that led to his meeting Capt. Baillie was strikingly illustrative of the observation, that the alightest incidents are often providentially made the instruments of important results. My father had been engaged to spend the day with Mrs. Moore, the mother of his friend Charles Moore and of Sir John Moore, and was proceeding with his friend C. M. across Spa Fields on foot, where a wide ditch tempted my father to prove his activity by leaping

over it, which he accomplished; but, slipping on the other side, sprained his ankle, and was carried home. In the evening he was so much recovered that he determined to join a dinner party, to which he found an invitation on his return home. Capt. Baillie was one of the party. If he had dined with Mrs. Moore, he might have waited for years before such an opportunity of showing what was in him might have presented itself."

† This, his first fee, he used long to show as a curiosity; and I presume it is still preserved in the family.



He was vain enough to think that he was to be sole counsel to show cause against the rule, and he was much elated by his good fortune.

When Michaelmas Term came round, a brief was delivered to him in *Rex v. Baillie*; but what was his consternation to behold upon it—

“ With you, Mr. Bearcroft,  
Mr. Peckham,  
Mr. Murphy, and  
Mr. Hargrave.”

He very reasonably despaired of being heard, or at all events of being listened to,—coming after so many seniors; and he gave himself no trouble to collect or to methodise the ideas upon the subject which had passed through his mind when he believed that the defence was to rest upon his own shoulders.

At a consultation, Bearcroft, Peckham, and Murphy were for consenting to a compromise which had been proposed by the prosecutors, that *the rule should be discharged, the defendant paying all costs*. “My advice, gentlemen,” said the Junior, “may savour more of my late profession than my present, but I am against compromising.” “I’ll be d—d if I do!” said Captain Baillie, and he hugged Erskine in his arms, crying “You are the man for me!”

About one o’clock in the afternoon of the 23rd of November, the Solicitor-General, who had obtained the rule, moved to make it absolute. Bearcroft began to show cause, and the affidavits being very long, and he and the three gentlemen who followed him being very prosy, and Mr. Hargrave, the last of them, having been several times while speaking obliged to leave the Court from indisposition, it was almost dark when he concluded his argument. Lord Mansfield, supposing that all the defendant’s counsel had been heard, said, “We will go on with this case to-morrow morning.” If the hearing had then proceeded, Erskine would not have done more than say a few words as a matter of form, and he might long have remained unknown.

When the Judges took their seats on the bench next day, the court was crowded in all parts, from the political aspect which the prosecution had assumed. The expectation was, that the Solicitor-General would immediately proceed to support his rule and would have no great difficulty in making

it absolute ;—but there rose from the back row a young gentleman whose name as well as whose face was unknown to almost all present, and who, in a collected, firm, but sweet, modest, and conciliating tone, thus began :—

“ My Lord, I am likewise of counsel for the author of this supposed libel ; and if the matter for consideration had been merely a question of private wrong, I should have thought myself well justified, after the very able defence made by the learned gentlemen who have spoken before me, in sparing your Lordship, already fatigued with repetition, and in leaving my client to the judgment of the Court. But upon an occasion of this serious and dangerous complexion,—when a British subject is brought before a court of justice only for having ventured to attack abuses, which owe their continuance to the danger of attacking them,—when, without any motives but benevolence, justice, and public spirit, he has ventured to attack them, though supported by power, and in that department too where it was the duty of his office to detect and expose them,—I cannot relinquish the high privilege of trying to do justice to such merit,—I will not give up even my small share of the honour of repelling and of exposing so odious a prosecution.”—After some general observations on the common herd of libellers whom the Court had been accustomed to punish, he said, “ I beseech your Lordships to compare these men and their works with my client and the publication before the Court. *Who is he? What was his duty? What has he written? To whom has he written? and what motive induced him to write?*” These few questions, which he answered *seriatim*, the advocate made the heads of his inimitable discourse—showing that his client had written nothing but the truth, and had acted strictly within the line of his duty. He was thus about to conclude :—“ Such, my Lords, is the case. The defendant,—not a disappointed malicious informer, prying into official abuses, because without office himself—but himself a man in office ;—not troublesomely inquisitive into other men’s departments, but conscientiously correcting his own ;—doing it pursuant to the rules of law, and, what heightens the character, doing it at the risk of his office, from which the effrontery of power has already suspended him, without proof of his guilt—a conduct not only unjust and illiberal, but highly disrespectful to this Court, whose judges sit in the double capacity of ministers of the law, and governors of this sacred and abused institution. Indeed, Lord Sandwich has in my mind acted such a part—” [*Here* (in the words of the report) Lord Mansfield, observing the counsel heated with his subject, and growing personal on the First Lord of the Admiralty, told him that Lord Sandwich was not before the Court.] *Erskine* : “ I know that he

“ Under such appalling circumstances, it might rather have been expected, that, when he heard his own voice for the first time in a public assembly, the description would have

been applicable to him—

“ And back recoil’d, he knew not why.  
E’en at the sound himself had made.”

is not formally before the Court, but for that very reason *I will bring him before the Court*. He has placed these men in the front of the battle in hopes to escape under their shelter, but I will not join in battle with them; *their vices*, though screwed up to the highest pitch of human depravity, are not of dignity enough to vindicate the combat with *me*. I will drag *him* to light who is the dark mover behind this scene of iniquity. I assert that the Earl of Sandwich has but one road to escape out of this business without pollution and disgrace,—and that is, by publicly disavowing the acts of the prosecutors, and restoring Captain Baillie to his command! If he does this, then his offence will be no more than the too common one of having suffered his own *personal* interest to prevail over his *public* duty in placing his voters in the Hospital. But if, on the contrary, he continues to protect the prosecutors, in spite of the evidence of their guilt, which has excited the abhorrence of the numerous audience who crowd this Court, IF HE KEEPS THIS INJURED MAN SUSPENDED, OR DARES TO TURN THAT SUSPENSION INTO A REMOVAL, I SHALL THEN NOT SCRUPLE TO DECLARE HIM AN ACCOMPLICE IN THEIR GUILT, A SHAMELESS OPPRESSOR, A DISGRACE TO HIS RANK, AND A TRAITOR TO HIS TRUST. But as I should be very sorry that the fortune of my brave and honourable friend should depend either upon the exercise of Lord Sandwich's virtues or the influence of his fears, I do most earnestly entreat the Court to mark the malignant object of this prosecution, and to defeat it.—I beseech you, my Lords, to consider that even by discharging the rule, and with costs, the defendant is neither protected nor restored. I trust, therefore, your Lordships will not rest satisfied with fulfilling your JUDICIAL duty, but, as the strongest evidence of foul abuses has by accident come collaterally before you, that you will protect a brave and public-spirited officer from the persecution this writing has brought upon him, and not suffer so dreadful an example to go abroad into the world, as the ruin of an upright man for having faithfully discharged his duty. My Lords, this matter is of the last importance. I speak not as an ADVOCATE alone—I speak to you AS A MAN—as a member of a state whose very existence depends upon her naval strength. If our fleets are to be crippled by the baneful influence of elections, WE ARE LOST INDEED. If the seaman, while he exposes his body to fatigues and dangers, looking forward to Greenwich as an asylum for infirmity and old age, sees the gates of it blocked up by corruption, and hears the riot and mirth of luxurious landmen drowning the groans and complaints of the wounded, helpless companions of his glory,—he will tempt the seas no more. The Admiralty may press HIS BODY, indeed, at the expense of humanity and the Constitution, but they cannot press *his mind*,—they cannot press the heroic ardour of a British sailor; and instead of a fleet to carry terror all round the globe, the Admiralty may not be able much longer to amuse us with even the peaceable, unsubstantial pageant of a review.\* FINE AND IMPRISONMENT! The man deserves

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\* There had just before been a naval review at Portsmouth.

a PALACE instead of a PRISON who prevents the palace built by the public bounty of his country from being converted into a dungeon, and who sacrifices his own security to the interests of humanity and virtue. And now, my Lords, I have done; but not without thanking your Lordships for the very indulgent attention I have received, though in so late a stage of this proceeding, and notwithstanding my great incapacity and inexperience. I resign my client into your hands, and I resign him with a well-founded confidence and hope; because that torrent of corruption which has unhappily overwhelmed every other part of the Constitution is, by the blessing of Providence, stopped HERE by the sacred independence of the Judges. I KNOW that your Lordships will determine ACCORDING TO LAW; and therefore, if an information should be suffered to be filed, I shall bow to the sentence, and shall consider this meritorious publication to be, indeed, an offence against the laws of this country; but then I shall not scruple to say, that it is high time for every honest man to remove himself from a country in which he can no longer do his duty to the public with safety,—where cruelty and inhumanity are suffered to impeach virtue,—and where vice passes through a court of justice unpunished and unproved.”

The impression made upon the audience by this address is said to have been unprecedented; and I must own that, all the circumstances considered, it is the most wonderful forensic effort of which we have any account in our annals. It was the *début* of a barrister just called and wholly unpractised in public speaking—before a court crowded with men of the highest distinction, belonging to all parties in the state. He came after four eminent counsel, who might be supposed to have exhausted the subject. He was called to order by a venerable Judge, whose word had been law in that Hall above a quarter of a century. His exclamation, “I will bring him before the Court,” and the crushing denunciation of Lord Sandwich,—in which he was enabled to persevere, from the sympathy of the by-standers, and even of the Judges, who in strictness ought again to have checked his irregularity,—are as soul-stirring as anything in this species of eloquence presented to us by ancient or modern times. I hardly less admire his quiet peroration, which, with an appearance of modesty and submission, breathes confidence and defiance. A commonplace declaimer would have thought it necessary to conclude with some noisy, mouthing sentences. How much more effective must have been the lowered tone of the man who knew instinctively to touch the feelings—speaking in an assembly where every look was fixed upon him—where every syllable he uttered was eagerly caught up—where

breathing was almost suspended—and as often as he paused a flake of snow would have been heard to fall!

Need I mention, that the rule was discharged with costs? It would be easy to narrate the congratulations which the young counsel received in Court, and his ovation when, on retiring, he walked through the Hall. But who could adequately describe his own feelings, when all his anxieties were over, and he knew that he had conquered fame for himself, and secured all worldly comforts to those who were dear to him? This last consideration I believe was nearest his heart. Being asked how he had the courage to stand up so boldly against Lord Mansfield, he answered, that he thought his little children were plucking his robe, and that he heard them saying, “Now, father, is the time to get us bread.” He himself is stated to have given, many years after at the “King of Clubs,” the following gay account of his start in the profession:—

“I had scarcely a shilling in my pocket when I got my first retainer. It was sent to me by a Captain Baillie, of the navy, who held an office at the board of Greenwich Hospital; and I was to show cause, in the Michaelmas Term, against a rule that had been obtained in the preceding term, calling upon him to show cause why a criminal information for a libel, reflecting on Lord Sandwich’s conduct as governor of that charity, should not be filed against him. I had met, during the long vacation, this Captain Baillie at a friend’s table, and after dinner I expressed myself with some warmth, probably with some eloquence, on the corruption of Lord Sandwich as First Lord of the Admiralty, and then adverted to the scandalous practices imputed to him with regard to Greenwich Hospital. Baillie nudged the person who sat next to him, and asked who I was? Being told that I had just been called to the Bar, and had been formerly in the navy, Baillie exclaimed with an oath, ‘Then I’ll have him for my counsel!’ I trudged down to Westminster Hall, when I got the brief, and, being the junior of five, who would be heard before me, never dreamed that the Court would hear me at all. Dunning, Bearcroft, Wallace, Bower, y Hargrave, were all heard at considerable length, and I was to follow. Hargrave was long-winded, and tired the Court. It was a bad omen: but, as my good fortune would have it, he was afflicted with the strangury, and was obliged to retire once or twice in the course of his argument. This protracted the cause so long that, when he had finished, Lord Mansfield said that the remaining counsel should be heard the next morning. This was exactly what I wished. I had the whole night to arrange, in my chambers, what I had

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y Erskine, or more likely his reporter, had was on the other side; and Wallace and forgot the names of the counsel. Dunning Bower were not engaged in the cause.

to say the next morning, and I took the Court with their faculties awake and freshened, succeeded quite to my own satisfaction, (sometimes the surest proof that you have satisfied others,) and as I marched along the Hall, after the rising of the Judges, the attorneys flocked around me with their retainers. I have since flourished, but I have always blessed God for the providential strangury of poor Hargrave." \*

Briefs and fees—large and small—now flowed in a continual stream into the chambers of the counsellor who had so astonished the world. He was at once in full business; and it should be recorded, for the honour of the "long robe," that, although he passed over the heads of many who had fully established themselves, or were gradually beginning to establish themselves, in Westminster Hall, there was no caballing against him; he had not even to encounter envy or ill-will; he was hailed by his competitors as conferring new honour upon them; and, bearing his faculties most meekly, he became, and ever continued, a favourite with all ranks of the profession.

He practised in the King's Bench. There he was very courteously treated by Lord Mansfield, who rejoiced to see the young officer of the Royals, whom he had invited to sit by him at the Assizes, transformed into the most eminent advocate at the English Bar. To this venerable peer, and to all other Judges, Erskine behaved with respect, but with uniform independence and freedom,—never basely surrendering a cause in which he knew that he was right, with a view to succeed, by favour, in others in which he might be wrong.

In the beginning of the following year he gained additional *éclat* as counsel in the famous court-martial, held at Jan. 1779. Portsmouth, on Admiral Lord Keppel, to try the charges tardily brought against him by Sir Hugh Palliser, of incapacity and misconduct in the battle off Ushant, with the French fleet under the command of Count d'Orvilliers. This case, bearing a great resemblance to that of Admiral Byng, excited quite as much interest, and many thought would have the same fatal termination. The party accused, however, being not only innocent, but belonging to the Whigs, who from the disasters of the war had risen much in public opinion, was extremely popular. For his very tri-

\* Adair's Clubs of London. On other occasions he varied the circumstances a good deal, and he carried the number of retainers which he received before he left the Hall to

the number of SIXTY-FIVE, inducing a suspicion that they had multiplied from narration.

umphant acquittal he was indebted to his advocate. He wished to be defended by Dunning and Lee; but they, giving him their general advice as to the line of defence he should take, recommended Erskine, who, in addition to his abilities, had the advantage of being well acquainted with naval language and naval manoeuvres. The trial lasted thirteen days, during all which time Erskine exerted himself for his client with unabated zeal and consummate discretion. He was not allowed to examine the witnesses *viva voce*, nor to address the Court; but he suggested questions, which were put in writing,—and he composed the speech which Lord Keppel delivered on the merits of his case. Considering the plain understandings to which this was addressed, I think admirable tact is discovered by its simplicity:\*

“After forty years spent in the service of my country,” (said the hoary-headed Admiral in his peroration, which seemed to be the genuine effusion of his own mind,) “little did I think of being brought to a court-martial to answer to charges of misconduct, negligence in the performance of duty, and tarnishing the honour of the British navy. These charges, Sir, have been advanced by my accuser. Whether he has succeeded in proving them or not, the Court will determine. Before he brought me to a trial, it would have been candid in him to have given vent to his thoughts, and not, by a deceptive show of kindness, to lead me into the mistake of supposing a friend in the man who was my enemy in his heart, and was shortly to be my accuser. Yet, Sir, after all my misconduct,—after so much negligence in the performance of duty, and after tarnishing so deeply the honour of the British navy,—my accuser made no scruple to sail a second time with the man who had been the betrayer of his country. Nay, during the time we were on shore, he corresponded with me on terms of friendship; and even in his letters he approved of what had been done—of the part which he now condemns, and of the very negligent misconduct which has since been so offensive in his eyes. Such behaviour, Sir, on the part of my accuser, gave me little reason to apprehend an accusation from him. Nor had I any reason to suppose that the State would criminate me. When I returned, his Majesty received me with the greatest applause. Even the First Lord of the Admiralty gave his flattering testimony to the rectitude of my conduct, and seemed, with vast sincerity, to applaud my zeal for the service. Yet, in the moment of approbation, it seems as if a scheme was concerting against my life; for, without any previous notice, five articles of charge were exhibited against me by Sir Hugh

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\* In a memoir of Erskine in the “Gentleman’s Magazine,” it is said that, “having drawn up Admiral Keppel’s defence, he personally examined all the Admirals and Cap-

tains of the fleet, and satisfied himself that he could substantiate the innocence of his client, before the speech which he had written for him was read.”

Palliser, who, most unfortunately for his cause, lay himself under an imputation for disobedience of orders, at the very time when he accused me of negligence. This, to be sure, was a very ingenious mode of getting the start of me. An accusation exhibited against a commander-in-chief might draw off the public attention for neglect of duty in an inferior officer. I could almost wish, in pity to my accuser, that appearances were not so strong against him. The trial has left my accuser without excuse, and he now cuts that sort of figure which I trust in God all accusers of innocence will ever exhibit! As to this Court, I entreat you, gentlemen, who compose it, to recollect that you sit here as a court of honour, as well as a court of justice; and I now stand before you, not merely to save my life, but for a purpose of infinitely greater moment—to clear my fame. My conscience is perfectly clear—I have no secret machination, no dark contrivance, to answer for. My heart does not reproach me. As to my enemies, I would not wish the greatest enemy I have in the world to be afflicted with so heavy a punishment as my accuser's conscience."

On the finishing of this speech, the Hall resounded with shouts of approbation. The Court, by an unanimous verdict, fully and honourably acquitted the Admiral, affirming that, far from having sullied the honour of the navy, he had acted as became a brave, judicious, and experienced officer. The cities of London and Westminster were illuminated two successive nights, and the mob breaking into the house of Sir Hugh Palliser destroyed his furniture and burned him in effigy.

Erskine did not on this occasion obtain much public applause, as the share he had had in the conduct of the defence was little known; but from his grateful client he received the munificent present of a thousand pounds. The correspondence between them is highly creditable to both:—

"Audley Square, Feb. 23, 1779.

"MY DEAR SIR,

"Do me the favour to accept the inclosed notes,<sup>b</sup> as an acknowledgment of the zealous and indefatigable industry you have shown in the long and tedious course of my court-martial. It is to your unremitting labours, together with the assistance of Mr. Dunning and Mr. Lee, that I chiefly owe its having been attended with so honourable a conclusion. I shall be very happy if I have been in any degree the means of furnishing you with opportunities of showing those talents which only wanted to be made known to carry you to the summit of your profession. I

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<sup>b</sup> Two bank notes of 500*l.* each.



shall ever rejoice in this commencement of a friendship which I hope daily to improve.

"I am, &c.,

"A. KEPPEL."

Greatly delighted, Erskine called in Audley Square to return thanks in person; but, not finding the Admiral at home, wrote the following touching acknowledgment in the porter's hall:—

"Audley Square, Tuesday afternoon.

"You must no doubt, my dear Sir, have been very much surprised at receiving no answer to your most generous letter, but, I trust, you are well enough acquainted with my temper and feelings to find out the reason, and to pardon me. I was indeed altogether unable to answer it. I could not submit to do injustice to my gratitude and affection, and was therefore obliged to be silent, till I could wait upon you in person; and, having missed you, must be silent still. I shall, therefore, only say, that the generous present you have sent me is out of all kind of bounds and measure, even if the occasion had afforded me an opportunity of rendering them; how much the more when your own ability and the absurdity of the occasion wholly disappointed my zeal! At all events, the honour of attending Admiral Keppel would have been in itself a most ample reward—an honour which, whatever my future fortunes may be, I shall ever consider as the brightest and happiest in my life, and which my children's children will hereafter claim as an inheritance.

"I do most sincerely pray God that every blessing may attend you, and that you may be spared for the protection of a country which has proved itself worthy of protection. My heart must ever be with you. Adieu, my dear Sir, and believe me to be, with the greatest respect and regard,

"Your most grateful and affectionate

"humble servant,

"T. ERSKINE."

He then, with a boyishness of disposition which distinguished him all his life, hurried to Bromley, and, showing his wealth to the Reynoldses, exclaimed "*Voilà!* the nonsuit of *cow* beef, my good friends."

This Spring he joined the Home Circuit, where his fame had preceded him, and he was immediately in full employment. Riding over a blasted heath between Lewes and Guildford with his friend William Adam, afterwards Lord Chief Commissioner of the Jury Court in Scotland,—(whether from some supernatural communication, or the workings of his own fancy, I know not) he exclaimed, after a long silence,

“Willie, the time will come when I shall be invested with the robes of Lord Chancellor, and the Star of the Thistle shall blaze on my bosom!”

Soon after his return to London he was retained as counsel at the bar of the House of Commons, against a bill which caused much agitation, as it touched the liberty of the press. Under a grant from King James I., the Stationers' Company and the Universities of Oxford and Cambridge had enjoyed the exclusive right of printing almanacks, till its validity was denied by Mr. Carman, a bookseller in St. Paul's Churchyard, who published other almanacks cheaper, more copious, and more correct. Legal proceedings being instituted against him, it was solemnly decided by the Court of Common Pleas and the Court of Exchequer that the grant was void. Lord North, Prime Minister and Chancellor of the University of Cambridge, thereupon introduced a bill into Parliament to vest the monopoly in the parties who had so long usurped it. Erskine's attack upon this unjust bill appears in the printed collection of his speeches which he himself revised, and it was not only highly esteemed by himself, but it has been loudly praised by others. I confess, however, that its merits seem to me to have been considerably overrated. Though sensible and judicious, it deals in commonplaces, and might have been made by a very inferior declaimer. Nevertheless, the tale is told,—so marvellous to those who have witnessed the utter neglect with which the best speeches of counsel at the bar of either chamber of Parliament are treated,—that “the House remained crowded till he had concluded, and that the rejection of the bill by a large majority, upon a division which immediately afterwards took place, was entirely to be ascribed to his eloquence.” Lord Eliot, Member for Cornwall, who at the desire of Lord North his brother-in-law had come from the extreme west to support the bill, certainly divided against it, declaring in the lobby that “after Mr. Erskine's speech he found it impossible to do otherwise.” But, although the advocate cannot be denied the rare glory of having influenced one vote by argument, I suspect that the result is to be ascribed to the contemplated job which was finally perpetrated, whereby the monopolists were indemnified for their loss out of the public revenue.<sup>c</sup>

His next appearance of which we have an account was as counsel for Lieutenant Bourne of the Royal Navy, brought up

before the Court of King's Bench for having sent a challenge to Admiral Sir James Wallace, his commanding officer, who was said to have used him very tyrannically. The circumstances of the case are devoid of interest, but Erskine's speech must ever be curious, as showing how, even before English judges sitting on their tribunal, a practice could be spoken of which I hope will speedily be condemned as much by the fashionable world, as by law, reason, and religion. Thus he meekly began—being about to declare the conduct of the defendant to be so meritorious that he himself under the same circumstances would have pursued his old commander, Sir David Lindsay, the nephew of Lord Mansfield, through created space, that he might force him into the field :—

“I build my principal hope of a mild sentence upon much more that will be secretly felt by the Court than may be decently expressed from the bar; for though I am convinced that your Lordships have all those nice sensations which distinguish men of honour from the vulgar, and that your genuine feelings for the defendant must be rather compassion and approbation than resentment, yet I cannot address myself to your Lordships sitting on that bench, and clothed in the robes of magistracy, in the same language by which I think I could ensure your favour to my client in another place. It is indeed very unfortunate for the gentleman whose cause I am defending, that your Lordships are bound, as judges of the law, to consider that as a crime in him against the society in which he lived, which yet if he had not committed, that very society would have expelled him, like a wretch, from its communion; and that you must speak to him the words of reproach and reprobation for doing that, which if he had not done, your Lordships would scorn to speak to him at all as private men. Surely, my Lords, this is a harsh and a singular situation. . . . I profess to think, with my worthy friend who spoke before me, that the practice of private duelling, and all that behaviour which leads to it, is a high offence against the laws of God; and I agree with that great Prince (Frederick II. of Prussia), that it is highly destructive of good government amongst men,—a practice certainly unknown to the most refined and heroic people the revolutions of time and manners have produced in the world,—and by which the most amiable man in society may be lost by an inglorious death, depending upon mere chance. *But though I feel all this, as I think a Christian and a humane man ought to feel it, yet I am not ashamed to acknowledge that I would rather be pilloried by the Court in every square in London, than obey the law of England, which I thus profess so highly to respect, in a case where that custom, which I have reprobated, warned me that the public voice was in the other scale.* My Lords, every man who hears me feels that so would he; for, without the respect and good opinion of the world we live in, no matter upon what foundation it is built, life itself is a worse imprisonment than any which

the laws can inflict ; and the closest dungeon to which a court of justice can send an offender, is far better with the secret pity and even approbation of those that send him there, than the range of the universe with the contempt and scorn of its inhabitants." After referring to voluminous affidavits to his client's character, he continued :—"A man in possession of such a character as this, justly acquired, will not consent to sacrifice it to the pride of any man ; it is a just and sacred pledge, and he to whom God in his providence has given it deserves every sort of reproach if he parts with it in a light cause. Unquestionably, the captain may desire every officer, whose duty it is to walk the quarter-deck, to go to the top of the mast of the ship ; but he cannot do that without an adequate cause, and without subjecting himself to the disgrace and punishment of a court-martial. I have had the honour to sail with a man who is an honour to that profession,—a gentleman, I believe, the most accomplished that this nation or world can produce, and who has the honour to be nearly allied to your Lordship. Under him I learned what idea ought to be entertained on this subject, and what respect ought to be paid to officers in all stations ; and the result of what I saw there, joined with my own original feelings, is this—that, *although I was placed on board his ship, to reverence him as my father, by the command of my own, and although at this hour I do reverence him in that character, yet I feel that if he had treated me in that manner, I should not have made Jamaica or Bath the limit of my resentments, but would have sought him through all created space, till he had answer made and done me justice!* There are some injuries which even Christianity doth not call upon a man to forgive or to forget, because God, the author of Christianity, has not made our natures capable of forgiving or forgetting them. I must plead for the infirmities of human nature, and beseech your Lordships once more to consider what the honour of an officer is ; consider that, and say what punishment this gentleman deserves. You have before you a young military man, jealous, as he ought to be, of his fame and honour, treated with the grossest indignity by his superior officer, smothering his honest resentment as long as the superior duties of military service required that painful sacrifice,—and afterwards pursuing the man who had dishonoured him, with a perseverance, certainly in criminal opposition to the law, but in obedience to what I may, without offence even here, term the generous infirmity in his nature, nourished by the long-established, though erroneous, customs of the world. . . . I rely with confidence upon the justice, the humanity, and the honour of the Court!"<sup>d</sup>

All that Erskine had yet done perhaps might have been accomplished by a skilful and fortunate rhetorician. He had now an opportunity of addressing to the feelings of a jury that fine union of argument and passion which constituted the character of his oratory, and of showing that by his intuitive

<sup>d</sup> Townsend's Eminent Judges, i. 412.

knowledge of the principles of criminal law, by his steady patriotism and his undaunted courage, the liberties of his country, while he survived, were to be in no danger from the most violent assault that could be made upon them, through a perversion of judicial procedure.

Lord George Gordon, an ignorant and enthusiastic, but very well-meaning, young nobleman, having testified a violent horror of popery, had been elected "President of the Protestant Association," and, at the head of upwards of forty thousand persons, had proceeded to the House of Commons to present a petition of the "Associated Protestants" for a repeal of certain slight modifications recently introduced into the atrocious penal code which then ground down our Roman Catholic fellow-citizens. This meeting, though rather tumultuary, had no aim against the Constitution of the country, and all who belonged to it were specially loyal to the King from sympathy of sentiment on religious subjects; but, unfortunately, it ushered in the fatal riots which for so many days desolated the metropolis, which shook for a time even the foundations of the Government, and the recital of which under the misnomer of "Lord George Gordon's riots" still frightens us. Although guilty of imprudence in exciting the fanaticism of the multitude,—when he saw among them any inclination to violate the law, he exerted himself to restore order, and he accompanied the Sheriffs of London into the City to exercise his influence among his followers for that purpose. Yet, when tranquillity was restored, he was committed to the Tower, and he was indicted for high treason in levying war against the Crown. He certainly was in very serious jeopardy, for a universal panic had prevailed for some days among all those who were to be his jurymen: they had expected that their houses would be burnt down, and their wives and daughters would be violated; they actually had seen the prisons broken open, fires blazing, and blood flowing in various parts of the metropolis, while the magistrates were paralysed with fear, and the soldiery could not act without orders—all these calamities being imputed to "the President of the Protestant Association." The Government likewise thought that it was necessary for the future tranquillity of the country that a signal sacrifice should be offered up to the offended majesty of the laws, however much the victim might be deserving of pity; and, in consequence, the prosecution was conducted with all the power of the Crown,

and with an earnest desire to obtain a conviction. But Erskine was counsel for the prisoner.

Regularly trained to the profession of the law—having practised thirty years at the Bar—having been A.D. 1781. Attorney-General above seven years—having been present at many trials for high treason, and having conducted several myself,—I again peruse with increased astonishment and delight the speech delivered on this occasion by him who had recently thrown aside the scarlet uniform of a subaltern in the army—which he had substituted for the blue jacket of a midshipman thrust upon him while he was a school-boy. Here I find not only wonderful acuteness, powerful reasoning, enthusiastic zeal, and burning eloquence, but the most masterly view ever given of the English law of high treason,—the foundation of all our liberties.

The trial came on in the Court of King's Bench before Lord Mansfield and his brethren. There had been a strange selection of a leading counsel against the Crown in Mr. Kenyon (afterwards Lord Kenyon), who, though well acquainted with the technicalities of real property, and the practice of Courts of Equity, had no talent for public speaking, and was entirely devoid of constitutional learning. Against the case made for the prosecution he delivered a very honest, but very inefficient, speech; and when he sat down, the friends of Lord George were in an agony of apprehension. According to the usual routine, Erskine ought to have followed immediately; but, to give the jurymen time to recover from the confusion into which they had been thrown, he prayed that, according to one precedent to be found in the "State Trials," his speech might be postponed till after the evidence for the prisoner had been closed. To this the Court assented, and a great many witnesses were called, the weight of whose evidence as to the personal demeanour of the prisoner was much weakened with the jury by what they stated, on cross-examination, respecting the outrages which were actually committed.

Erskine rose a little after midnight, and not only instantly dispelled all feeling of exhaustion and lassitude from the minds of the jury, the Judges, and the bystanders, but, while he spoke, they seemed all to be inspired with a new ethereal existence, and they listened as if addressed by some pure Intelligence of Heaven, who had appeared to instruct them!

His speech is too closely-reasoned and concatenated to allow me to give any adequate notion of it by extracts. After

a most captivating proemium, he proceeds to lay down the law in the able manner to which I have referred, asserting nothing that could be gainsaid—but artfully adapting the points he made most salient to the facts on which he was to comment. Thus he felicitously referred to the destruction of the house of the presiding Judge during these riots,—drawing from it an argument in favour of his client :—

“Can any man living believe that Lord George Gordon could possibly have excited the mob to destroy the house of that great and venerable magistrate, who has presided so long in this great and high tribunal, that the oldest of us do not remember him with any other impression than the awful form and figure of justice; a magistrate, who had always been the friend of the Protestant Dissenters against the ill-timed jealousies of the Establishment;—his countryman too; and, without advertng to the partiality not unjustly imputed to men of that country, a man of whom any country might be proud?—No, gentlemen, it is not credible that a man of noble birth and liberal education (unless agitated by the most implacable personal resentment, which is not imputed to the prisoner), could possibly consent to this burning of the house of Lord Mansfield.”

He then reviewed the whole of the evidence, varying his tone from mild explanation to furious invective,—always equally skilful and impressive, and ever carrying the sympathies of his hearers along with him in the most daring flights of his eloquence. Now was witnessed the single instance recorded in our judicial annals, of an advocate in a court of justice introducing an oath by the sacred name of the Divinity,—and it was introduced not only without any violation of taste, or offence to pious ears, but with the thrilling sensations of religious rapture, caught from the lips of the man who, as if by inspiration, uttered the awful sound. Arguing upon the construction of certain words attributed to Lord George Gordon, he exclaimed, “But this I will say, that he must be a *ruffian*, and not a lawyer, who would dare to tell an English jury that such ambiguous words, hemmed closely between others not only innocent, but meritorious, are to be adopted to constitute guilt by rejecting both introduction and sequel.” Then, after noticing the offer made to the Government by the prisoner himself to quell the disturbance, he ventured upon the following bold and extraordinary sentence: “I say, BY GOD, that man is a *ruffian*, who shall, after this, presume to build upon such honest, artless conduct, as an evidence of guilt.” The sensation produced by this daring appeal to the

feelings of the jury, and by the magic of the voice, the eye, the face, the action with which it was uttered, is related by those present on this memorable occasion to have been electrical. Some have supposed that the oath was premeditated; but "intuitive and momentary impulse could alone have prompted a flight which it alone could sustain; and as its failure would, indeed, have been fatal, so its eminent success must be allowed to rank it among the most famous feats of oratory."<sup>e</sup>

When he had shown the futility of all the supposed proofs relied upon for the Crown, and dwelt upon the strong testimony adduced to establish the innocence of the prisoner, he thus proceeded:—

"What, then, has produced this trial for high treason? What! but the inversion of all justice, by judging from consequences, instead of from causes and designs? What! but the artful manner in which the Crown has endeavoured to blend the petitioners in a body, and the zeal with which an animated disposition conducted it, with the melancholy crimes that followed—crimes which the shameful indolence of our magistrates, which the total extinction of all police and all government, suffered to be committed in broad day, in the delirium of drunkenness, by an unarmed banditti, without a head, without plan or object, and without a refuge from the instant gripe of justice; a banditti, with whom the Associated Protestants and their President had no manner of connection, and whose cause they overturned, dishonoured, and ruined? How unchristian, then, is it to attempt, without evidence, to infect your imaginations, who are upon your oaths dispassionately and disinterestedly to try the offence of assembling a multitude to petition for the repeal of a law,—by blending it with the subsequent catastrophe, on which every man's mind may be supposed to retain some degree of irritation! O fie! O fie! it is taking advantage of all the infirmities of our nature! Do they wish you, while you are listening to the evidence, to connect it with consequences in spite of reason and truth, to hang the millstone of prejudice round his innocent neck to sink him? If there be such men, may God forgive them for the attempt, and inspire you with fortitude and wisdom to do your duty to your fellow-citizens with calm, steady, reflecting minds. I may now, therefore, relieve you from the pain of hearing me any longer, and be myself relieved from a subject which agitates and distresses me. Since Lord George Gordon stands clear of every hostile act or purpose against the legislature of his country or the rights of his fellow-subjects,—since the whole tenour of his conduct repels the belief of the traitorous intention charged by the indictment,—my task is finished. I shall make no address to your passions. I will not remind you of the long and rigorous imprisonment he

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<sup>e</sup> Ed. Review, vol. xvi. p. 108.



has suffered; I will not speak to you of his great youth, of his illustrious birth, or of his uniformly animated and generous zeal in Parliament for the Constitution of his country. Such topics might be useful in the balance of a doubtful case. At present, the plain and rigid rules of justice and truth are sufficient to entitle me to your verdict: and may God Almighty, who is the sacred author of both, fill your minds with the deepest impression of them, and with virtue to follow those impressions! You will then restore my innocent client to liberty, and me to that peace of mind which, since the protection of his innocence in any part depended upon me, I have never known."

Perhaps there is nothing in the speech more admirable than the soft, quiet, complacent key in which it concludes. Without arrogance or presumption, he considers that the cause is won—no further exertion is necessary,—"*radit iter liquidum.*" By a quick interchange of thought the sentiment is imbibed by the jury, that their verdict is already unanimously settled, and that they have only to go through the form of pronouncing it. Accordingly they were proof against the reply of the Solicitor-General; and, after a rather severe summing up from Lord Mansfield, at a quarter past five in the morning they said, NOT GUILTY. All reasonable men rejoiced. Even Dr. Johnson said "he was glad Lord George Gordon had escaped, rather than that a precedent should be established for hanging a man for *constructive treason*;" "which," adds Boswell, "in consistency with his true, manly, constitutional Toryism, he considered would be a dangerous engine of arbitrary power."<sup>f</sup> If the precedent had been established in this instance, it certainly would have been followed in 1794, and our lost liberties could only have been restored by some dreadful convulsion. But a just notion of the offence of compassing the death of the King, and of levying war against him in his realm, was now impressed upon the English nation by the exertions of Erskine; and afterwards, in the "Reign of Terror," when the grand struggle came, he was enabled to march from victory to victory.<sup>g</sup>

<sup>f</sup> Vol. iv. p. 92.

<sup>g</sup> State Trials, vol. xxi. p. 485—647.

## CHAPTER CLXXVIII.

CONTINUATION OF THE LIFE OF LORD ERSKINE TILL THE CONCLUSION OF  
THE CASE OF THE DEAN OF ST. ASAPH.

WE are next to see our illustrious advocate on the political stage,—where his success was by no means so brilliant. He was of a Whig family, and he ever adhered steadily to the Whig party. Its three great leaders, when he appeared in public life, were all in the meridian of their reputation,—the “Coalition” not yet having dimmed the lustré of Fox’s name—Burke not yet having been disturbed from his liberal course by the French Revolution,—and the fatal web of pecuniary embarrassment not yet having been wound round the soul of Sheridan, leading him to discreditable actions and degrading habits. These men rapturously hailed the rising genius of one likely to prove so powerful an auxiliary; but they advised that with his full occupation in his profession he should not enter Parliament either while Lord North was minister, or during the Governments of Lord Rockingham or Lord Shelburne. When the “Coalition” was formed, however, a long tenure of power was expected by his friends, his promotion to be a law officer of the Crown on the first vacancy was promised to him, and his assistance was wanted against a host of lawyers who, joining the Opposition, were now obstructing business in the House of Commons, although the Ministry could command large majorities upon a division. There was some difficulty in finding a seat for the aspirant. But Sir William Gordon, who represented Portsmouth, was prevailed upon to take the Chiltern Hundreds, in consideration of a comfortable provision made for him; and Erskine succeeded him, making himself popular with the inhabitants by boasting of his maritime education, and his warm attachment to the naval service. The “Point” afforded scope for innumerable jests against him from Jekyll, and his other friends in Westminster Hall; but

he bore them all with great good humour, and took off the effect of a bad pun by a worse."

There was great eagerness to hear his maiden speech in St. Stephen's Chapel. Almost all mankind anticipated that he would still raise his reputation by being a match for the younger Pitt, who had recently, all at once, placed himself in the very highest class of parliamentary orators; but a few judicious men, who knew Erskine best, had misgivings as to his success in a new field, in which, if not higher, very different qualifications were required from those he had hitherto displayed. Thus wrote one of his professional friends to another, detailing the gossip of the robing-room:—

"Nov. 3, 1783.

"Wallace is gone down to Teignmouth, the place where Dunning died,—in all probability on the same errand. Everybody says that Erskine will be Solicitor-General, and if he is, and indeed whether he is or not, he will have had the most rapid rise that has been known at the Bar. It is four years and a half since he was called, and in that time he has cleared 8000*l.* or 9000*l.* besides paying his debts,—got a silk gown, and business of at least 3000*l.* a year—a seat in Parliament—and, over and above, has made his brother Lord Advocate. For my part I have great doubts whether his coming into Parliament was a wise thing. He sacrificed his House of Commons business, which was very profitable. He has several of Burke's defects, and is not unlikely to have his fate, and the expectation from him will be too great to be satisfied. We expect a match between him and Pitt, and another between Fox and Flood."

Deep was the disappointment of the Opposition—loud was the exultation of the Ministers—when the new champion in the political arena had essayed his prowess. It is a curious coincidence that Erskine and John Scott, afterwards Lord Eldon, of whom but slender expectations were then entertained, first addressed the House of Commons in the same debate,—upon the introduction of Mr. Fox's famous India Bill. Alas! neither of them raised the reputation of lawyers for parliamentary oratory. The Equity man took the precedence, but was dull and prosy. Our great common lawyer despised such an antagonist, and lay by for Pitt—but (*impar congressus!*) disgrace fell on both sides of Westminster Hall. The speech of the honourable member for Portsmouth could

h Jekyll said to him, "Having been long a wanderer, I hope you will now stick to the Point." He answered, "Yes, I have an eye

to the pole, since I know where the Pointers are." My readers have probably heard of the Point at Portsmouth, and its inhabitants

not have been so wretchedly bad as it is represented in the Parliamentary History,—from which I cannot extract a sentence of any meaning, except the concluding one—that “he considered the present bill as holding out the helping, not the avenging, hand of Government.”<sup>i</sup> But all agreed in considering the effort a failure. The most favourable account of it I find is by Sir Nathaniel Wraxall: “Mr. Erskine, who, like Mr. Scott, has since attained to the highest honours and dignities of the Bar, first spoke as a member of the House of Commons in support of this obnoxious measure. His enemies pronounced the performance tame, and destitute of the animation which so powerfully characterised his speeches in Westminster Hall. They maintained that, however resplendent he appeared as an advocate while addressing a jury, he fell to the level of an ordinary man, if not below it, when seated on the Ministerial bench, where another species of oratory was demanded to impress conviction or to extort admiration. To me, who, having never witnessed his jurisprudential talents, could not make any such comparison, he appeared to exhibit shining powers of declamation.”<sup>k</sup>

According to one most graphic representation of the scene, Erskine's faculties upon this occasion were paralysed by the by-play of his opponent: “Pitt, evidently intending to reply, sat with pen and paper in his hand, prepared to catch the arguments of this formidable adversary. He wrote a word or two. Erskine proceeded; but, with every additional sentence, Pitt's attention to the paper relaxed, his look became more careless, and he obviously began to think the orator less and less worthy of his attention. At length, while every eye in the House was fixed upon him, with a contemptuous smile he dashed the pen through the paper and flung them both on the floor. Erskine never recovered from this expression of disdain;—his voice faltered, he struggled through the remainder of his speech, and sank into his seat dispirited and shorn of his fame.”<sup>m</sup>—A discussion is said to have arisen at the time, whether Pitt's pantomimic display of contempt was premeditated, or arose from the feeling of the moment; but the probability is, that, expecting an antagonist from whose discomfiture

<sup>i</sup> 23 Parl. Hist. 1216. In answer to the argument from the violation of the charters of the East India Company, he seems to have taunted Pitt with the little respect he showed for the ancient privileges of the rotten bo-

roughs by his plan of Parliamentary Reform. This could not have been well received on either side of the House.

<sup>k</sup> Memoirs, ii. 436.

<sup>m</sup> Croly's Life of George IV.

he anticipated fresh renown, he really had been preparing in good earnest for the encounter, and that, more displeased than gratified at the tyro's political feebleness, he threw away the pen and the paper as the readiest mode of marking his disappointment.

While Pitt remained at the Bar they had been apparently very good friends, although Mr. Espinasse conjectures (I think without reason) that the future Prime Minister had then conceived a grudge against the future Chancellor. "Pitt," says he, "had been once in a cause with him at Westminster, and attended a consultation. Erskine was the kindest of leaders, and the most gentle and encouraging to his juniors; but possibly some of his vagaries had offended the precise and serious young gentleman, who perhaps felt somewhat of the alarm that I have known the clients of the great advocate feel on attending a consultation on their case. Certain it is that Pitt never justly appreciated that illustrious man, and always took a pleasure in mortifying him in the House." It must be matter of conjecture which would have had the advantage if they had been rivals in Westminster Hall—but it cannot be denied that Erskine was much inferior in power and splendour as a parliamentary debater. "He was overpowered by the commanding tone, the sarcastic invective, and the cutting irony of Pitt."<sup>a</sup> "At a dinner given by Mr. Dundas at Wimbledon, Addington, Sheridan, and Erskine being present, the last was rallied on his not taking so prominent a position in the debates in Parliament as his high talents and reputation entitled him to assume,—when Sheridan said, "I'll tell you how it happens, Erskine: you are afraid of Pitt, and that is the flabby part of your character."<sup>o</sup>

Erskine spoke again on the second reading of the Bill, and with better effect. He now took an able view of our territorial acquisitions in the East, contending that they belonged to the Crown of Great Britain, and that the Parliament of Great Britain had a right to regulate the government of them as part of the British Empire,—ridiculing the notion that the East India Company was now to be dealt with as a private mercantile partnership. He further showed that charters such as those granted to the East India Company were necessarily subject to the control of Parliament, and that these very charters had been on several former occasions modified by Parliament for the benefit of our fellow-subjects in India, without any com-

<sup>a</sup> Fraser's Magazine.

<sup>o</sup> Pellew's Memoirs of Lord Sidmouth

plaint of bad faith or unconstitutional legislation. Having then vindicated the details of the measure, he thus concluded: "I declare solemnly upon my honour, (which has never, I thank God, been called in question in public or in private,) that I give my support most conscientiously to this urgently necessary reform. My original opinion in its favour is confirmed by the support it has received, in conduct and in argument, from the wise and eloquent statesman who presented it to the House,—whose talents seem to be formed by Providence to retrieve this still great country from its fallen and oppressed condition. Let my right honourable friend go on with firmness, and risk his office at every step he takes; and I will combat, as I now do, by his side, ready to sacrifice every prospect of ambition. Let him be guided by his own manly understanding, and the integrity of his own heart, and I will stand for ever by him, or sink with him in his fall." <sup>p</sup>

The Bill being defeated in the House of Lords, and the Coalition Ministry being dismissed, Erskine was true to his pledge. He started in Opposition before the new ministerial arrangements were completed, by moving a resolution, "That this House will consider as an enemy to the country any person who shall presume to advise his Majesty to dissolve Parliament in the present juncture of affairs." The gallery having been shut during this debate, which was of a very inflammatory nature, his speech is lost, but we know that he carried his motion by a majority of 73.<sup>1</sup> On a subsequent day he moved an address to the Crown, founded on this resolution, contending, in a speech of great length, but not much distinguished for constitutional learning, that the House of Commons might properly interfere with the exercise of any of the prerogatives of the Crown, and that a dissolution at that time would be highly injurious to the interests of the public. He smartly observed, "Should Parliament be now dissolved, and my constituents should ask me *why*? I must really be at a loss for an answer. They may say, 'Is it because the supplies have been withheld?' I must reply, 'That cannot be the reason, for the Commons have liberally granted all the supplies that Government has called for.' 'Have the Commons, then, thrown any obstacle in the way of his Majesty's Executive Government?'

<sup>p</sup> 23 Parl. Hist. 1292. This peroration was maliciously compared to the saying of the sailor in Joe Miller, who, in a time when there was a cry that the Church was in dan-

ger, patted with his hand one of the pillars of St. Paul's, crying out, "Don't be afraid; I will stand by you."

<sup>1</sup> 24 Parl. Hist. 224—25.

‘So far is this from being the case, I must say that in all their deliberations they have gone hand in hand with his Majesty’s Ministers, and never negatived a single proposition that has been made to them.’ If I am then asked, ‘Is it because they have no confidence in his Majesty’s Ministers?’ my answer must be ‘No, but because his Majesty’s Ministers have no confidence in them; and therefore, as they are not Ministers to suit the Parliament, a Parliament is wanted to suit the Ministers.’” Getting upon his own ground, he argued very keenly upon the insufficiency of Lord Temple’s denial that he declared the King’s hostility to the India Bill by merely saying “he had not used the words imputed to him.”—“Suppose that a doctor should have been suspected of having poisoned a patient with *tinctura thebaica*, and that a friend should wait upon him and acquaint him that such a suspicion, so injurious to his character, was rumoured abroad, and the doctor should say, ‘My dear friend, I assure you, upon my honour, I never administered to the patient *tinctura thebaica*,’ would this answer satisfy any man that the doctor was innocent? Nay, I insist it would fix upon him the strongest suspicion that he had poisoned his patient with some other drug. This is what lawyers call a *negative pregnant*, or a denial bearing an admission of the truth of the charge.”—The motion was carried, and Erskine, going up with the address, was surprised to hear the King say, “I assure you I will not interrupt your meeting by any exercise of my prerogative, either of prorogation or dissolution.” The Coalitionists were not yet sufficiently unpopular, and his Majesty “bided his time.”

On the day when Mr. Pitt, the new Prime Minister, resumed his seat in the House of Commons, after his re-election, Mr. Fox brought forward his motion for going Jan. 12, 1784. into a committee on “the state of the nation.” Erskine, on this occasion, came down with a prepared, but not very felicitous, oration :—

“The question was,” he said, “whether this country was to be governed by men whom the House of Commons could confide in, or whether the representatives of the people were to be the sport of any junto that might hope to rule over them by an unseen and inexplicable principle of government utterly unknown to the Constitution. The total removal of all the executive servants of the Crown, while they were in full possession of the confidence of that House, and indeed without any other visible or avowed cause than their enjoyment of that con-

fidence, and the appointment of others with no pretension except that they enjoyed it not, appeared to him a most alarming and portentous attack on public freedom. If the right honourable gentleman retains his opinions, which are in direct contradiction to those repeatedly avowed by this House, he enters upon office without the most distant prospect of serving the public. He brings on a struggle between executive and legislative authority, when they were harmoniously working together for the common good. But whoever stands upon secret influence against the confidence of this House will find that his abilities, however great they may be, or may be fancied, instead of being a support and protection to him, will only be like the convulsions of a strong man in the agonies of disease, which exhaust the vital spirit faster than the languishing of debility, and bring on death the sooner. Such, in a few hours, I trust, will be the fate of the right honourable gentleman at the head of the present Government. Indeed, I never compare in my own mind his first appearance in this House, when under the banners of my right honourable friend he supported the genuine cause of liberty, with his present melancholy, ridiculous situation in it, but I am drawn into an involuntary parody of the scene of Hamlet and his mother in the closet:—

Look here upon this picture, and on this:  
 See what a grace was seated in his youth,  
 His father's fire—the soul of Pitt himself,  
 A tongue like his to soften or command;  
 A station like the genius of England  
 New lighted on this top of Freedom's hill;  
 A combination and a form indeed,  
 Where every God did seem to set his seal  
 To give his country earnest of a patriot.  
 ——— Look you now what follows:  
 Dark secret influence, like a mildew'd ear,  
 Blasting his public virtue: has he eyes?  
 Could he this hright assembly leave to please,—  
 To hatten on that bench?'

“The right honourable gentleman may profit the less by these observations, from believing that I seek them, and that I have pleasure in making them. If he thinks so, let me assure him, upon my honour, that he is mistaken—so very much mistaken, that the inconveniences which the world suffers at this moment from the want of a settled government are greatly heightened to my feelings from the reflection that they are caused by his misguided ambition. Our fathers were friends, and I was taught from infancy to reverence the name of Pitt. This original predilection, instead of being diminished, was greatly strengthened by a personal acquaintance with the right honourable gentleman himself—which I was cultivating with pleasure when he was taken from his profession into a different scene. Let him not think me the less his friend, or that I am the mean envier of his talents, if I suggest to him that they have been too much talked of, and that both he and his country are now reaping the bitter fruits of the intemperate



praises bestowed upon them. 'It is good,' says Solomon, 'for a man to bear the yoke in his youth.' If the right honourable gentleman had attended to that maxim, he would have been contented, in a subordinate situation, to have assisted in carrying on the affairs of the nation, instead of declaring that none is fit for him but the highest, and thus for a time, at least, (the spirit of the House will take care that it is not long,) disturbing and distracting the whole range of public affairs. How very different has been the progress of my right honourable friend who sits near me! He was not hatched into a Prime Minister by the heat of his own ambition, but, *bearing the yoke in his youth*, as it was *good for him*, passed through subordinate offices, matured his talents in long Oppositions, and reached, by the natural progress of his powerful mind, a superiority of political wisdom and comprehension which all sides in this House have long, with delight and satisfaction, acknowledged."

In a subsequent part of the same debate (the House sitting from two o'clock in the afternoon till eight next morning), Erskine made an extempore attack on the Premier, in which, being cheered on by his friends, he succeeded much better. Pitt had declared that he took the Government on the plain and intelligible ground that he might save the country from the India Bill; and he was thus answered:—

"After the inconsistencies of the day, I am not surprised to hear the right honourable gentleman assert the India Bill to be the cause of his assuming the government; but I shall be surprised indeed if any body believes him. No man of common sense—at least no man of common memory—sitting in this House will believe him, for all have heard him a hundred and a hundred times declaim upon his determined purpose to destroy the late Government before the India Bill was thought of. He could not act with the '*Coalition*,' forsooth,—not he! because of the obnoxious principles of the noble lord in the blue ribbon—and yet he flies at the same moment into the arms of the pure and patriotic Lord Advocate, as if he had been attached to him by magnetism. I suppose it may be owing to a sort of political Methodism, which operates by faith, to the total exclusion of works, and by which the most obdurate sinner may be converted in a moment, without giving up any of the amusements of the flesh. It is, Sir, an affront to human reason to say that it was inconsistent for the right honourable gentleman to act in concert with the noble lord in the blue ribbon—while he is content to sit in the Cabinet with Lord Gower, the uniform supporter of that noble lord, and with Lord Thurlow, who, if not the instigator, was the zealous defender, of the worst errors of the Administration by which America was lost to us,—though, perhaps, the right honourable gentleman may say he has accommodated matters with these two noble lords, that, sinking other differences, he may have their sure co-operation in his

grand plan of parliamentary reform, on which he still declares that he rests his own reputation, and which he still maintains to be necessary for the salvation of the state! [much laughter.] I should, indeed, admire the rigidity of that man's muscles who can withstand the childish, impertinent inconsistencies in these political partialities and aversions—although melancholy is the reflection, that to such pretences the interests of this miserable, devoted country are to be sacrificed.”<sup>†</sup>

When Mr. Pitt's India Bill was introduced, under which our Eastern possessions have been so long and auspiciously governed, Erskine described it as “such a monstrous production as never did, and he trusted never would, disfigure the Statute Book of this realm;”—as “a mere piece of patchwork, which could only disgrace the contriver;” adding, “that it would deluge this country with profligacy and venality of every kind, that it would ruin the East India Company, and that it would lead to the oppression and misery of the inhabitants of Indostan, till they would rise and shake off our yoke.” He then contrasted it with the rejected India Bill, the merits of which he once more detailed at great length to the House.”

On a subsequent day he justified the Resolution of the Commons which had been censured by the House of Lords directing the Lords of the Treasury not to make certain payments out of the public revenue. He contended that it was only declaratory of the law, and did not try to make a new law, as the Lords pretended. “What have been the pitiful tricks,” he asked, “employed to support a set of Ministers who have defied the jurisdiction of this House? They have tried to delude the public mind, and to obtain addresses in their favour by stratagem and imposture. The prejudices against the measures of the late Government, and against my right honourable friend, originated in misrepresentation and falsehood.”<sup>\*</sup>

Erskine's last speech in the House of Commons, till seven years had rolled away, was on the motion for stopping the supplies, in consequence of the King's refusal to dismiss his Ministers in pursuance of the address of the House of Commons praying him to do so. In answer to the objection that Ministers should have been tried before they were condemned, he justified the resolutions of the House against them, from the famous work of Lord Somers, written in answer to the declaration of King Charles II. to the people of England on the dissolution of Parliament in 1681;—reading several passages, which made the distinction between impeachments to

<sup>†</sup> 24 Parl. Hist. 313.

<sup>u</sup> Ib. 402.

<sup>\*</sup> Ib. 563.

*punish*, and addresses and resolutions to *remove*, Ministers,—the first requiring accusation and trial—the last resting on opinion, which may depend upon matters palpable and certain, though beyond the reach of legal proof, and which may be reasonably destructive of all confidence, though not a foundation for punishment.<sup>†</sup>

The motion was carried, and soon after Parliament was dissolved, the public being highly disgusted with the coalitionists, and indignant at the factious attempts which had been made to subvert Mr. Pitt's Government,—so that he could now with confidence appeal to the constituencies. Erskine, sharing the fate of many of his Whig friends, lost his seat for Portsmouth, and could not gain admission into the new Parliament. If he had been able justly to estimate his own powers, he must have felt little regret; for he had clearly proved to the world that the *forum*, not the *senate*, was the proper field for their display.

Notwithstanding these political checks and mortifications, his professional career went on with increasing brilli-  
May, 1783.  
 liancy. During the Coalition Ministry, while the Great Seal was in commission, he had obtained a patent of precedence, which entitled him to wear a silk gown and sit within the bar. Lord Loughborough, the First Lord Commissioner, was most active in conferring this dignity upon him, but the step was said to have been suggested by Lord Mansfield, in consideration of his great eminence in the Court of King's Bench; and, although he had not yet been five years at the Bar, the whole profession concurred in the propriety of it. He had refused to hold junior briefs; and while he wore a stuff gown, taking rank only from his standing at the Bar, a number of venerable juniors, who at the age of fifty or sixty still wore the same garb, were thrown out of business, as they could not be retained with him in the same cause. His consequence depended less than that of any other man who has ever been in the profession on the place from which he spoke, or the robe which he wore,—but he was pleased with his promotion; for a silk gown, from its rarity, was then a great distinction, and even *he* was sensible that his weight on common occasions, both with judges and jurymen, was enhanced by belonging to the chosen few who enjoyed the highest rank at the Bar.<sup>‡</sup>

<sup>†</sup> 24 Parl. Hist. 615.

<sup>‡</sup> There was much difficulty in settling the precedence of those now promoted. It was

wished to give the *pas* to Erskine, who was by far the most distinguished, but was the junior in standing at the Bar. Pigot, after-

Now began his special retainers, by which he was taken to the assizes in all parts of England and Wales, with a fee of at least 300 guineas.\* The first of these was in the case of the Dean of St. Asaph.

The famous Sir William Jones, the most accomplished man of his age, had written a very harmless little tract illustrating the general principles of government, and recommending parliamentary reform, entitled "A Dialogue between a Gentleman and a Farmer." His brother-in-law, Dr. Shipley, approving of it, recommended it to a society of reformers in Wales, and caused it to be reprinted. Thereupon, the Honourable Mr. Fitzmaurice, brother to the first Marquis of Lansdowne, preferred an indictment against the Dean at the Great Sessions for Denbighshire, for a seditious libel; and in the autumn of 1783 it stood for trial at Wrexham, before Lord Kenyon, then Chief Justice of Chester, and his brother Judge, Mr. Justice Barrington. Erskine attended, and thousands flocked to this dirty Welsh village in the hope of hearing him. There was a general feeling in favour of the defendant, so that his acquittal was anticipated, for not only had the pamphlet been generally read and approved of, but it was well known that the Attorney and Solicitor-General, being applied to, had refused on the part of the Government to prosecute the author. At the sitting of the Court, however, a motion was made by the prosecutor's counsel to postpone the trial, on the ground that a paper had been printed and extensively circulated in the neighbourhood, which, without mentioning or alluding to the

wards Attorney-General, yielded his claim. It has been said, "He was probably despised by Erskine for this voluntary humiliation, and to a feeling of contempt may be ascribed that bitterness against the pusillanimous senior which excited general surprise."\* The Right Hon. T. Erskine writes to me,—"I cannot believe that this charge of bitterness against Pigot had any other foundation than some misconstrued ebullitions of professional zeal. I have often heard my father speak of Pigot in terms of admiration and regard; and it is to me inconceivable that a man so overflowing with generous kindness should have selected as the single object of personal rancour one whose only offence was the tender of the highest compliment that one com-

petitor in a professional struggle can pay to his rival. The imputation is disproved by the whole current of his life, and obvious character of his disposition."

\* According to the etiquette of our profession, no barrister may go to plead a cause on a different circuit from that which he usually attends, except on a special retainer; and, if he wears a silk gown, he cannot take a fee less than 300 guineas. This is to prevent the unseemly scramble for business which might otherwise take place. Some say that special retainers began with Erskine; but I doubt the fact. From this time till he left the Bar he had, upon an average, twelve special retainers a-year.

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\* Townsend's Lives of Eminent Judges, i. 423.

pending prosecution, argued that in all cases of libel the jury are judges of the law as well as of the fact, and contained various extracts from legal writers to establish this position. There was no allegation that this was done by the defendant, and he made an affidavit, positively denying all knowledge of it. Notwithstanding an animated address from Erskine upon the unreasonableness of the motion and the extreme hardship which delay would cause to his client, the Judges, without hearing the reply, ordered the trial to be postponed; and upon a suggestion by Erskine that a letter of the prosecutor could be proved, showing that he was acting vindictively, the following speech is said to have been made by the presiding judge. *Lord Chief Justice Kenyon*: "*Modus in rebus*—there must be an end of things."<sup>b</sup>

The case again stood for trial before the same tribunal in the spring of 1784, and Erskine again repaired to Wrexham; but this time he had not the opportunity A.D. 1784. of even making a complaint, for, alighting from his post-chaise, he found that by a writ of *certiorari* served the same day, the indictment was removed from the Great Sessions in Wales into the Court of King's Bench.

The trial actually did come on at the following Summer Assizes for Salop, the next adjoining English county, before Mr. Justice Buller—when a scene was acted ever memorable in our juridical annals. Bearcroft, leading counsel for the prosecution, although he expressed his own opinion that the Dialogue was a libel, aware that no twelve Englishmen would find it to be so, boldly affirmed that this was no question for the jury, and that they were bound to convict the defendant if they believed that he caused it to be published, and that it was "of and concerning the King and his Government,"—leaving him to move the Court in arrest of judgment, or to bring a writ of error if he was advised that its sentiments and language were innocent.

"The only difficulty which I feel," said Erskine, "in resisting so false and malevolent an accusation is to be able to repress the feeling excited by its folly and injustice within those bounds which may leave

<sup>b</sup> 21 State Trials, 875. There were several Latin quotations which this distinguished lawyer had picked up, and which he generally misapplied,—inasmuch that George III. gave him the friendly advice,—"*Stick to your good law, and leave off your bad Latin.*"

He was very acute, very deeply learned in his profession, and a very honest man; but it was rather humiliating that the successor of such an accomplished scholar as Lord Mansfield should hardly have had the rudiments of a classical education.

my faculties in their natural and unclouded operation ; for I solemnly declare to you, that if he had been indicted as a libeller of our holy religion, only for publishing that the world was made by its Almighty Author, my astonishment could not have been greater than it is at this moment, to see the little book which I hold in my hand presented by a Grand Jury of English subjects as a libel upon the Government of England. Every sentiment contained in it (if the interpretation of words is to be settled, not according to fancy, but by the common rules of language) is to be found in the brightest pages of English literature, and in the most sacred volume of English laws : if any one sentence, from the beginning to the end of it, be seditious or libellous, the Bill of Rights was a seditious libel ; the Revolution was a wicked rebellion ; the existing Government is a traitorous conspiracy against the hereditary monarchy of England ; and our gracious Sovereign, whose title I am persuaded we are all of us prepared to defend with our blood, is an usurper of the crown he wears. That all these absurd, preposterous, and treasonable conclusions follow necessarily and unavoidably from a conclusion that this Dialogue is a libel,—copying the example of my learned friend who has pledged his personal veracity in support of his sentiments,—I assert, upon my honour, to be my unaltered, I may say my unalterable opinion, formed upon the most mature deliberation ; and I choose to place that opinion in the very front of my address to you, that you may not, in the course of it, mistake the energies of truth for the zeal of professional duty. This declaration of my own sentiments, even if my friend had not set me the example by giving you his, I should have considered to be my duty on this occasion ; for although, in ordinary cases, where the private right of the party accused is alone in discussion, and no general consequences can follow from the decision, the advocate and the private man ought in sound discretion to be kept asunder, yet there are occasions when such separation would be treachery and meanness. In a case where the dearest rights of society are involved in the resistance of a prosecution,—where the party accused is, as in this instance, a mere name,—where the whole community is wounded through his sides,—and where the conviction of the private individual is the subversion or surrender of public privileges,—the advocate has a more extensive charge—the duty of the patriot citizen then mixes itself with his obligation to his client—and he disgraces himself, dishonours his profession, and betrays his country, if he does not step forth in his personal character, and vindicate the rights of all his fellow-citizens, which are attacked through the medium of the man he is defending. Gentlemen, I do not mean to shrink from that responsibility upon this occasion ; I desire to be considered the fellow-criminal of the defendant—if by your verdict he should be found one—by publishing in advised speaking (which is substantially equal in guilt to the publication that he is accused of before you) my hearty approbation of every sentiment contained in this little book, promising here in the face of the world to publish them upon every suitable occasion, amongst that part of the community within the reach of my precept, influence, and example. If there be any

more prosecutors like the present abroad amongst us, they know how to take advantage of these declarations." Then, well knowing Buller's opinion respecting the rights of jurors to consider the question of *libel or no libel*, and the direction that would certainly be given by him in this case,—with admirable calmness and tact he thus proceeds:—"Gentlemen,—when I reflect upon the danger which has often attended the liberty of the press in former times, from the arbitrary proceedings of abject, unprincipled, and dependent Judges, raised to their situations without ability or worth, in proportion to their servility to power, I cannot help congratulating the public that you are to try this indictment with the assistance of the learned Judge before you,—much too instructed in the laws of this land to mislead you by mistake, and too conscientious to misinstruct you by design. The days, indeed, I hope are now past when judges and jurymen upon state trials were constantly pulling in different directions,—the Court endeavouring to annihilate altogether the province of the jury, and the jury in return listening with disgust, jealousy, and alienation to the directions of the Court. Questions of libel may now be expected to be tried with that harmony which is the beauty of our legal constitution,—the jury preserving their independence in judging of the intention, which is the essence of every crime,—but listening to the opinion of the judge upon the evidence, and upon the law, with that respect and attention which dignity, learning, and honest intention in a magistrate must and ought always to carry along with them. Having received my earliest information in my profession from the learned Judge himself, and having daily occasion to observe his able administration of justice, you may believe that I anticipate nothing from the Bench unfavourable to innocence; and I have experienced his regard in too many instances not to be sure of every indulgence that is personal to myself. These considerations enable me with more freedom to make my address to you upon the merits of this prosecution, in the issue of which your own general rights, as members of a free state, are not less involved than the private rights of the individual I am defending."

So, without laying himself open to any interruption from the Judge, whom he appeared to treat with great courtesy and respect, he assumed that the jury were to determine upon the true character of the paper charged as libellous. Having then pointed out the extreme hardship his client had suffered in the trial being twice postponed, and at last brought on at such a distance from his home, he came to the "DIALOGUE;" and, taking it sentence by sentence, in a speech of several hours, which never flagged for an instant, he showed that most Englishmen would concur in its doctrines—which were the foundation for the Bill to reform the representation of the people several times brought forward by the present Prime Minister, and that, at all events, it stated nothing which in a free country might not be lawfully brought forward for con-

sideration and debate. Finding that he had the jury "breast high" with him, he returned to the subject of their power to deal with the question of *libel* or *no libel*, which he asserted in still bolder language—and thus he took leave of them:—"Let me therefore conclude with reminding you, gentlemen, that if you find the defendant GUILTY, not believing the thing published to be a libel, or the intention of the publisher seditious, your verdict and your opinion will be at variance, and it will then be between God and your own consciences to reconcile the contradiction."

Mr. Justice Buller, however, began his summing up by telling the jury that, there being no doubt as to the *innuendoes*, the only question they had to decide was, "whether the defendant was or was not proved to have published the pamphlet?" He overruled all that had been contended for on this subject by the defendant's counsel, saying "How this doctrine ever comes to be now seriously contended for is a matter of some astonishment to me, for I do not know any one question in the law which is more thoroughly established;"—and, after a great many similar observations, he thus concluded: "Therefore, I can only say, that if you are satisfied that the defendant did publish this pamphlet, and are satisfied as to the truth of the innuendoes, you ought in point of law to find him guilty."

The jury withdrew, and in about half an hour returned into court. When their names had been called over, the following scene was enacted.—*Clerk*: "Gentlemen of the jury, do you find the defendant guilty or not guilty?" *Foreman*: "Guilty of publishing only." *Erskine*: "You find him guilty of publishing only?" *A Juror*: "Guilty only of publishing." *Buller, J.*: "I believe that is a verdict not quite correct. You must explain that, one way or the other. The indictment has stated that *G.* means 'Gentleman,' *F.* 'Farmer,' *the King* 'the King of Great Britain,' and *the Parliament* 'the Parliament of Great Britain.'" *Juror*: "We have no doubt about that." *Buller, J.*: "If you find him guilty of publishing, you must not say the word 'only.'" *Erskine*: "By that they mean to find there was no sedition." *Juror*: "We only find him guilty of publishing. We do not find any thing else." *Erskine*: "I beg your Lordship's pardon; with great submission, I am sure I mean nothing that is irregular. I understand they say, 'We only find him guilty of publishing.'" *Juror*: "Certainly, that is all we do find." *Buller, J.*: "If you only attend



to what is said, there is no question or doubt." *Erskine*. "Gentlemen, I desire to know whether you mean the word 'only' to stand in your verdict?" *Jurymen*: "Certainly." *Buller, J.*: "Gentlemen, if you add the word 'only,' it will be negating the innuendoes." *Erskine*: "I desire your Lordship, sitting here as Judge, to record the verdict as given by the Jury." *Buller, J.*: "You say he is guilty of publishing the pamphlet, and that the meaning of the innuendoes is as stated in the indictment." *Juror*: "Certainly." *Erskine*: "Is the word 'only' to stand part of the verdict?" *Juror*: "Certainly." *Erskine*: "Then I insist it shall be recorded." *Buller, J.*: "Then the verdict must be misunderstood; let me understand the jury." *Erskine*: "The Jury do understand their verdict." *Buller, J.*: "Sir, I will not be interrupted." *Erskine*: "I stand here as an advocate for a brother citizen, and I desire that the word *only* may be recorded." *Buller, J.*: "SIT DOWN, SIR; REMEMBER YOUR DUTY, OR I SHALL BE OBLIGED TO PROCEED IN ANOTHER MANNER." *Erskine*: "YOUR LORDSHIP MAY PROCEED IN WHAT MANNER YOU THINK FIT; I KNOW MY DUTY AS WELL AS YOUR LORDSHIP KNOWS YOURS. I SHALL NOT ALTER MY CONDUCT."

The learned Judge took no notice of this reply, and, quailing under the rebuke of his pupil, did not repeat the menace of commitment. This noble stand for the independence of the Bar would of itself have entitled Erskine to the statue which the profession affectionately erected to his memory in Lincoln's Inn Hall. We are to admire the decency and propriety of his demeanour during the struggle, no less than its spirit and the felicitous precision with which he meted out the requisite and justifiable portion of defiance. The example has had a salutary effect in illustrating and establishing the relative duties of Judge and Advocate in England.

The jury, confounded by the altercation, expressed a wish to withdraw, and the verdict was finally entered, "Guilty of publishing, but whether a libel or not we do not find."

In the ensuing Michaelmas Term a rule was obtained to show cause why the verdict should not be set aside, and a new trial granted, on the ground of misdirection by the Judge.<sup>c</sup>

<sup>c</sup> In a copy of the trial, which had formerly belonged to Lord Erskine himself, I find in his own handwriting, after the verdict at Shrewsbury, the following memorandum:—"In Michaelmas T., which immediately followed, I moved the Court of King's Bench

for a new trial, for a misdirection of the Judge, and misconduct after the verdict was returned into Court. I made the motion from no hope of success, but from a fixed resolution to expose to public contempt the doctrines fastened on the public as law by

Erskine's addresses to the Court in moving, and afterwards in supporting, his rule, display beyond all comparison the most perfect union of argument and eloquence ever exhibited in Westminster Hall. He laid down five propositions most logically framed and connected—which, if true, completely established his case—and he supported them with a depth of learning which would have done honour to Selden or Hale, while he was animated by an enthusiasm which was peculiarly his own. Though appealing to Judges who heard him with aversion or indifference, he was as spirited as if the decision had depended on a favourable jury, whose feelings were entirely under his control. So thoroughly had he mastered the subject, and so clear did he make it, that he captivated alike old black-letter lawyers and statesmen of taste and refinement. Charles Fox was not present in court, and could not have been carried away by the exciting manner of the advocate; yet having read the second speech, delivered in moving to make the rule absolute, he often declared it to be the finest piece of reasoning in the English language. But it made no impression on the Judges. Erskine himself, in his defence of Paine, some years afterwards, gives rather a striking description of the manner in which they received it:—"I ventured to maintain this very right of a jury over the question of libel under the same ancient constitution, before a noble and reverend magistrate of the most exalted understanding and of the most uncorrupted integrity. He treated me—not with contempt, indeed, for of that his nature was incapable—but he put me aside with indulgence, as you do a child when it is lisping its prattle out of season." Of the closely-knit arguments and beautiful illustrations which constituted this speech, it would be impossible by extracts to convey an idea.

Lord Mansfield, in giving judgment, relied upon the practice that had long prevailed, and mainly upon the words of a ballad made on the acquittal of the "CRAFTSMAN" prosecuted by Sir Philip Yorke—which he misquoted, saying,—

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Lord Chief Justice Mansfield, and to excite, if possible, the attention of Parliament to so great an object of national freedom." There then follows an observation which I do not understand: "The latter object mis-carried from a circumstance which will hereafter be a curious piece of history, and show upon what small and strange pivots the

greatest national events turn and depend." I presume that this had been written before Mr. Fox introduced his Libel Bill, which was not till 1791; and that a reference is made to some unknown circumstance which had delayed, and was thought to have defeated, that measure.

“ Sir Philip well knows  
 That his innuendoes  
 Will serve him no longer  
 In verse or in prose ;  
 For twelve honest men have decided the cause,  
*Who are judges of fact, though not judges of laws.”*

Whereas the true rendering of the last line is—

*“ Who are judges alike of the facts and the laws.”*

Erskine then moved in arrest of judgment, saying, that “ all who knew him, in and out of the profession, could witness for him, that he had ever treated the idea of ultimately prevailing against the defendant upon such an indictment to be perfectly ridiculous, and that his only object, in all the trouble he had given to their Lordships and to himself, in discussing the right to a new trial, was to resist a precedent which he originally thought, and still continued to think, was illegal and unjustifiable : the warfare was safe for his client, because he knew he could put an end to the prosecution any hour he pleased, by the objection he would now, at last, submit to the Court.” He was contending that the “ Dialogue ” was an entirely innocent production, when the counsel for the prosecution were required to point out any part of it, as charged in the indictment, which could be considered criminal, and they being unable to do so, JUDGMENT WAS ARRESTED.

So ended this famous prosecution. It seemed to establish for ever the fatal doctrine, that *libel or no libel* was a pure question of law, for the exclusive determination of Judges appointed by the Crown. But it led to the subversion of that doctrine, and the establishment of the liberty of the press, under the guardianship of English juries. The public mind was so alarmed by the consequences of this decision, that Mr. Fox’s Libel Bill was called for, which *declared* the rights of jurors in cases of libel ; and I rejoice always to think that it passed as a *declaratory* act, although all the Judges unanimously gave an opinion in the House of Lords, that it was inconsistent with the common law. I have said, and I still think, that this great constitutional triumph is mainly to be ascribed to Lord Camden, who had been fighting in the cause for half a century, and uttered his last words in the House of Lords in its support ; but had he not received the invaluable assistance of Erskine, as counsel for the Dean of St. Asaph, the Star Chamber might have been re-established in this country.<sup>d</sup>

## CHAPTER CLXXIX.

CONTINUATION OF THE LIFE OF LORD ERSKINE TILL THE COMMENCEMENT  
OF THE STATE TRIALS IN 1794.

WHILE out of Parliament, Erskine several times appeared as counsel at the bar of the House of Commons, using May, 1784. very considerable freedoms with this august assembly. Being retained upon the petition respecting the "Westminster Scrutiny," in cross-examining a witness who had imputed misconduct to Mr. Fox's agents he put the question, "Why do you infer that they were Mr. Fox's agents?" and the witness replying, "Because they appeared to be his friends," he exclaimed, "If all Mr. Fox's friends are to be taken to be his agents, every honest man may be so esteemed who is not a member of this House." The counsel was ordered to withdraw, and the Speaker was severely blamed for allowing such language to pass unnoticed. Cornwall apologised—admitting what had been said at the bar to be highly irregular, and a vote of censure on the counsel was then moved. Erskine, who was within hearing, was turning in his mind the spirited speech he should make in answer, when he was deeply mortified by hearing Pitt say, in a most supercilious tone, "I rather think, Sir, it is not worth our while to take any further notice of the language of the learned gentleman, as it probably formed part of his instructions"!!!

Appearing to support a petition against certain clauses of the new Bill for regulating the affairs of the East India Company, he denounced the whole measure as a vile imposture practised on a credulous nation, eulogising in the warmest terms the rejected bill of his right honourable friend. An admonition to regularity at last coming from the chair, he said, "If, Mr. Speaker, I have been guilty of any irregularity, it arises solely from a diminution of that respect which I was accustomed to feel for this assembly before it was shorn of its dignity—but which no longer animates me." He then, in an ironical and taunting tone, observed upon the humility of his present situation, standing at the bar of that House of which

he had formerly been a member, and on the respect due to an assembly which was supposed to be so pure, so elevated, and so wise. At last he tried to restore good humour by a bad joke—saying, “I am well aware, Sir, that addresses from counsel are never much relished by the members of this House, and are rather submitted to by way of *physic*, as it were, for the benefit of the *constitution*. I promise, therefore, to make my dose as palatable as the nature of the patient’s case will admit.” This the House would not swallow, and the Speaker again interrupted him, desiring him to confine himself to the prayer of the petition. *Erskine*: “At this late hour, Sir, the House ought not to enter upon the consideration of so important a subject.” *Speaker*: “Sir, it does not become counsel at the bar to intimate when this House ought to adjourn. The House will govern its own proceedings as it thinks proper; and, unless you wish to make some farther observations for your client, you may withdraw.” *Erskine* continued his speech, but with little effect, as the feeling on both sides was against him, and he required as a stimulus to his oratory the sympathy of his audience.

Although he could never very successfully adapt himself to the trim of the House of Commons, such rebuffs were soon forgotten amidst his triumphs in the adjoining Hall. Bearcroft, Pigot, and the other King’s counsel opposed to him were completely overmatched by him; he had formidable influence with judges as well as jurymen; and the saying went, that “in the Court of King’s Bench he was like a bull in a china shop.”<sup>\*</sup> He now gave up his circuit entirely, and confined himself to special retainers—being the first English barrister who ever took so bold a step.

While excluded from Parliament, he kept up a strict political connection with the Opposition leaders, and was particularly intimate with Fox and Sheridan. He had a transcendent admiration of Burke, whose writings he perused almost as much as those of Milton and Shakspeare. But the feeling was not reciprocal. Burke disliked all lawyers, and, considering the new ally of the party rather shallow and ill-informed, is said to have envied the fame and fortune he was acquiring. But *Erskine* was a very great favourite

<sup>\*</sup> It might have been said of him, as it afterwards was of Scarlett, that “he had invented a machine by the secret use of which in court he could always make the head of

a judge nod assent to his propositions; whereas his rivals, who tried to pirate it, always made the head of the judge move dissentingly from side to side.”

with the Prince of Wales, who was at this time a zealous Whig, and, forming his establishment as heir apparent, made him his Attorney-General; intimating that if of longer standing at the Bar he should have been appointed Chancellor of the Duchy of Cornwall—but that this office should be kept vacant for him.

I mention the next case, in which he particularly attracted the attention of the public, chiefly for the purpose of showing the defective state of the administration of the criminal law which still prevailed. A gentleman of the name of Motherill, who certainly was of bad moral character as well as of deformed person, but who, like all the King's subjects, was entitled to a fair trial, stood capitally charged for an assault upon Miss Wade, a young lady between sixteen and seventeen years of age, the daughter of an officer in the army, then Master of the Ceremonies at Brighton. Erskine was brought special to the Sussex Assizes, and, although there was a strong prejudice against the prisoner, and no speech from counsel could be heard for him, thus addressed the jury, without being checked by the Judge, and I presume without being supposed to outstep the line of his duty,—the inflammatory language of the harangue being rendered more objectionable by its affected candour:—

“I beseech you, gentlemen, to discharge from your minds every thing you have heard of the prisoner, and I might add, too, every thing you have seen; for I am told *this wicked and unfortunate wretch* has been this morning led about the streets for the benefit of air, and may probably have excited your compassion. I have no objection that you should compassionate him; a man is more an object of compassion because he is an object of justice,—because his crimes are objects of horror.” After exciting the sympathies of the jury for the afflicted father—praising his gallantry when in the service to which he had himself belonged,—he introduces the daughter with an affecting picture of her beauty and purity—preparing the jury for some inconsistencies in her evidence by insinuating that she was rather weak in her understanding. He then continues:—“When she is attentively observed by you, you will probably make this remark, that I confess I made myself upon seeing her, that if you could conceive a painter of the finest genius to be desirous of representing the character of artless simplicity and innocence, he would fix upon the countenance and figure of Miss Wade.—(What a venial offence is even murder compared with that of which the prisoner is accused!)—It seems at first view, and it has often struck me as a very great hardship, that the prisoner's counsel cannot make those observations which in the commonest civil law action every man's counsel is enabled to make for him; but the law is much wiser than me or any

other individual. Custom comes to the protection of the prisoner, and imposes as a duty upon those who prosecute that, which perhaps the law does not enforce, viz. that with whatever strength, with whatever clearness, with whatever conclusion the evidence on the part of the prosecution shall appear to-day, and whatever art and ingenuity may be employed to defeat the ends of justice, I shall, I can, make no reply. If I should see the strength of my evidence as clear as the sun at noon-tide, and if I should see the weakness of any observations on the effect of any cross-examination of this young lady, so that I might drag him to justice by the power of your enlightened understanding, I shall be silent as the grave." After a highly coloured sketch of the facts, he thus concludes:—"If there is any probability in favour of the prisoner at the bar, in God's name let him have it. But there is no probability in his favour, none that any reasonable mind can for a moment entertain; for, let me ask you this question, whether it be consistent with any thing you ever saw, heard, or read of, that a young lady of hitherto chaste and virtuous life, artless, simple, and innocent in her manners, should all of a sudden go out on a tempestuous night—leave her father's house, not to throw herself into the arms of a lover who had addressed her and endeavoured to seduce her, but into the arms of a stranger, with nothing to recommend him, with nothing upon earth to captivate or seduce the fancy? It is repugnant to reason to believe it—it is a thing incredible, that the most viciously disposed woman could go into the arms of the squalid wretch before you! I do not mean to insult him by the expression; his wickedness renders him an object of compassion. But if he is not to be insulted, a virtuous, innocent, miserable, ruined lady is not to pass unredressed; nor the breach of God's laws and the country's to pass unrevenged. If he dies, he suffers less than her who lives. Oh fie! It is a solemn and an unpleasant duty you have to perform. You are humane, I have no doubt, and I am glad you are so. Those who are not humane cannot be just. Justice is all I ask at your hands. If in your consciences you believe that the prisoner at the bar did commit this offence, so shocking to the individual and repugnant to all the principles of justice, you are bound in duty to God and to your country to convict him. If you can go home to-night, and satisfy yourselves that this young lady either has not been violated in point of fact, or that, having been so, it has been with her own consent; if you can persuade yourselves of that absurd and improbable proposition, after you shall have heard the evidence, I shall not call your mercy in question; it is a matter which will rest with your own consciences."

Although circumstances appeared which induced the jury very reluctantly to pronounce a verdict of *Not Guilty*, it is impossible to say that they could be in a fit state of mind to discharge their duty after listening to this appeal to their passions. Soon after, by a well-understood rule in the profession, a counsel for the Crown on a charge of felony was confined to a dry statement of the facts, with a view to enable the

jury to understand the evidence ; and now, thank God ! the Prisoner's Counsel Bill has entirely removed the stain which so long deformed our criminal procedure.

Several years rolled on prosperously in the common routine of the profession, without producing any other celebrated cause or any political event to affect the fortunes of Erskine. In Trinity Term, 1788, the increasing infirmities of Lord Mansfield induced him to retire from his office, after having presided with distinguished lustre as head of the Common Law for upwards of thirty-two years. On this occasion Erskine, as the organ of the counsel practising in his Court, wrote and presented to him the following address :—

*“ To the Earl of Mansfield.*

“ MY LORD,

“ It was our wish to have waited personally upon your Lordship in a body, to have taken our public leave of you, on your retiring from the office of Chief Justice of England ; but judging of your Lordship's feelings upon such an occasion by our own, and considering, besides, that our numbers might be inconvenient, we desire, in this manner, affectionately to assure your Lordship, that we regret, with a just sensibility, the loss of a magistrate whose conspicuous and exalted talents conferred dignity upon the profession, whose enlightened and regular administration of justice made its duties less difficult and laborious, and whose manners rendered them pleasant and respectable.

“ But, while we lament our loss, we remember with peculiar satisfaction, that your Lordship is not cut off from us by the sudden stroke of painful distemper, or the more distressing ebb of those extraordinary faculties which have so long distinguished you among men ; but that it has pleased God to allow to the evening of a useful and illustrious life the purest enjoyments which Nature has ever allotted to it—the unclouded reflections of a superior and unfading mind over its varied events, and the happy consciousness that it has been faithfully and eminently devoted to the highest duties of human society, in the most distinguished nation upon earth.

“ May the season of this high satisfaction bear its proportion to the lengthened days of your activity and strength ! ”

To this address Lord Mansfield immediately returned the following answer :—

*“ To the Honourable T. Erskine, Serjeants' Inn.*

“ DEAR SIR,

“ I cannot but be extremely flattered by the letter which I this moment have the honour to receive.

“ If I have given satisfaction, it is owing to the learning and candour



of the Bar : the liberality and integrity of their practice freed the judicial investigation of truth and justice from difficulties. The memory of the assistance I have received from them, and the deep impression which the extraordinary mark they have now given me of their approbation and affection has made upon my mind, will be a source of perpetual consolation in my decline of life, under the pressure of bodily infirmities which made it my duty to retire.

“ I am, dear Sir,

“ With gratitude to you and the other gentlemen,

“ Your most affectionate

“ And obliged humble servant,

“ MANSFIELD.

“ Caen Wood, June 18, 1788.”

It was thought that this change might be prejudicial to the ascendancy of Erskine ; but he was, if possible, a greater favourite with the new Chief Justice Lord Kenyon than he had been with Lord Mansfield, and he always continued to have “ the ear of the Court,”—a great felicity for an advocate when it is not obtained by servility.

Not being in the House of Commons during the King's illness, which occurred in the following autumn, he was debarred from taking any part in the debates, and I do not find him much engaged in the intrigues about the Regency, although he strongly concurred in the doctrine, that during the incapacity of the reigning sovereign from mental alienation the heir apparent was entitled, *de jure*, to take upon himself the exercise of the prerogatives of the Crown. It was settled that he should be Attorney-General to the new Ministry, but I do not believe that the Prince much consulted him about the course to be adopted—being entirely under the more experienced guidance of Lord Loughborough.

The Attorney-General Elect felt a good deal cast down when the prospects of himself and his party were so completely blasted by the King's recovery in the beginning of 1789 ; but his spirits soon rallied, and before that year expired he acquired glory much more to be envied than the power or the pelf belonging to the highest offices in the state. As counsel for Stockdale he made the finest speech ever delivered at the English Bar, and he won a verdict which for ever established the freedom of the press in England.

Pending the impeachment of Mr. Hastings, after the articles against him drawn up by Mr. Burke in very inflamed language had appeared in every newspaper, together with the vituperative

speeches of the eloquent managers at the bar of the House of Lords, Mr. Logan, a minister of the Church of Scotland, wrote a pamphlet in his defence, which certainly contained some rather free and offensive observations upon the prosecution. The charges against Mr. Hastings were said to "originate from misrepresentation and falsehood;" the House of Commons, in making one of those charges, was compared to "a tribunal of inquisition rather than a court of Parliament:" others of them were stigmatised as "so insignificant in themselves, or founded on such gross misrepresentations, that they would not affect an obscure individual, much less a public character:" and, after a good deal of invective and sarcasm, the impeachment was said to be "carried on from motives of personal animosity, not from regard to public justice." But the author entered into the merits of the case very deliberately and very powerfully, and seemed animated by a sincere desire to show the innocence of the accused. This pamphlet was published by Mr. Stockdale, a respectable bookseller in Piccadilly, in the way of his trade. Mr. Fox, instigated by Burke, complained of it in his place as a libel upon the managers and upon the whole House of Commons; and an address was carried, praying the King to direct his Attorney-General to prosecute the publisher. Accordingly, a criminal information was filed by Sir Archibald Macdonald, the then Attorney-General, against Mr. Stockdale, and it came on to be tried before Lord Kenyon and a special jury in the Court of King's Bench at Westminster.

Justly to appreciate Erskine's inimitable speech upon this occasion, the whole must be perused over and over again—when an admirable chain of reasoning will be found to run through it,—principles will be seen clearly enunciated, illustrated, and established,—and the facts of the case will demonstrably appear to be brought within the scope of these principles, so as to entitle the defendant to an acquittal;—the reader all along admiring the exquisite fancy with which the sentiments are embellished, and the harmonious and touching language in which they are conveyed. "It is justly regarded by all English lawyers as a consummate specimen of the art of addressing a jury—as a standard, a sort of precedent for treating cases of libel." But a few extracts, which may be introduced into a biographical memoir, will give a notion, although an inadequate one, of its transcendent merit. To

excite a little compassion for Mr. Hastings, and to prepare the minds of the jury favourably to consider a publication written in his defence—in which some intemperance of language might be expected—he gives the following picturesque description of the trial in Westminster Hall :—

“There the most august and striking spectacle was daily exhibited which the world ever witnessed. A vast stage of justice was erected, awful from its high authority, splendid from its illustrious dignity, venerable from the learning and wisdom of its judges, captivating and affecting from the mighty concourse of all ranks and conditions which daily flocked into it as into a theatre of pleasure. Here, when the whole public mind was at once awed and softened to the impression of every human affection, there appeared day after day, one after another, men of the most powerful and exalted talents, eclipsing by their accusing eloquence the most boasted harangues of antiquity ; rousing the pride of national resentment by the boldest invectives against broken faith and violated treaties, and shaking the bosom with alternate pity and horror by the most glowing pictures of insulted nature and humanity ;—ever animated and energetic, from the love of fame, which is the inherent passion of genius ;—firm and indefatigable, from a strong prepossession of the justice of their cause. Gentlemen, when the author sat down to write the book now before you, all this terrible, unceasing, exhaustless artillery of warm zeal, matchless vigour of understanding, consuming and devouring eloquence, united with the highest dignity, was daily, and without prospect of conclusion, pouring forth upon one private unprotected man who was bound to hear it in the face of the whole people of England with reverential submission and silence. I do not complain of this as I did of the publication of the charges, because it is what the law allowed and sanctioned in the course of a public trial : but when it is remembered that we are not angels, but weak fallible men, and that even the noble Judges of that high tribunal are clothed beneath their ermines with the common infirmities of man's nature, it will bring us all to a proper temper for considering the book itself, which will in a few moments be laid before you. But, first, let me once more remind you, that it was under all these circumstances, and amidst the blaze of passion and prejudice which the scene I have been endeavouring faintly to describe to you might be supposed likely to produce, that the author sat down to compose the book which is prosecuted to-day as a libel.”

After some compliments to the character of that gentleman, the advocate thus strikingly and skilfully states the motive by which he had been actuated, and the question which the jury had to determine :—

“He felt for the situation of a fellow-citizen, exposed to a trial which, whether right or wrong, is undoubtedly a severe one ;—a trial

certainly not confined to a few criminal acts, like those we are accustomed to, but comprehending the transactions of a whole life, and the complicated policies of numerous and distant nations ;—a trial which had neither visible limits to its duration, bounds to its expense, nor circumscribed compass for the grasp of memory or understanding ;—a trial which had, therefore, broke loose from the common form of decision, and had become the universal topic of discussion in the world, superseding not only every grave pursuit, but every fashionable dissipation. Gentlemen, the question you have, therefore, to try upon all this matter, is extremely simple. It is neither more nor less than this. At a time when the charges against Mr. Hastings were, by the implied consent of the Commons, in every hand and on every table ;—when by their harangues the lightning of eloquence was incessantly consuming him, and flashing in the eyes of the public ;—when every man was, with perfect impunity, saying, and writing, and publishing just what he pleased of the supposed plunderer and devastator of nations ; would it have been criminal in *Mr. Hastings himself* to have reminded the public that he was a native of this free land, entitled to the common protection of her justice, and that he had a defence in his turn to offer them, the outlines of which he implored them, in the mean time, to receive as an antidote to the unlimited and unpunished poison in circulation against him ? This is, without colour or exaggeration, the true question you are to decide. Gentlemen, I tremble with indignation to be driven to put such a question in England. Shall it be endured that a subject of this country—instead of being arraigned and tried for some single act in her ordinary courts, where the accusation, as soon at least as it is made public, is followed in a few hours by the decision—may be impeached by the Commons for the transactions of twenty years,—that the accusation shall spread as wide as the region of letters,—that the accused shall stand, day after day and year after year, as a spectacle before the public, which shall be kept in a perpetual state of inflammation against him ;—yet that he shall not, without the severest penalties, be permitted to submit any thing to the judgment of mankind in his defence ? If this be law (which it is for you to-day to decide), such a man has NO TRIAL ; that great Hall, built by our fathers for English justice, is no longer a court, but an altar ;—and an Englishman, instead of being judged in it by GOD AND HIS COUNTRY, is A VICTIM AND A SACRIFICE. If you think, gentlemen, that the common duty of self-preservation in the accused himself, which nature writes as a law upon the hearts of even savages and brutes, is nevertheless too high a privilege to be enjoyed by an impeached and suffering Englishman ;—or, if you think it beyond the offices of humanity and justice, when brought home to the hand of a brother or a friend, you will say so by your verdict of GUILTY. The decision will then be *yours*, and the consolation *mine*, that I laboured to avert it. A very small part of the misery which will follow from it is likely to light upon *me* ; the rest will be divided amongst *yourselves and your children*."

Having at great length, and with unflagging spirit, examined

the contents of the pamphlet, and commented on the passages charged in the information to be libellous,—with the view of ingratiating Mr. Hastings's defender with the jury, he proceeds to take a favourable view of the conduct of Mr. Hastings himself; not venturing to defend all his acts, but palliating them so as to make them be forgiven, or even applauded, from the circumstances in which he was placed, and the instructions which he had received. Then follows the finest passage to be found in ancient or modern oratory—for imagery, for passion, for pathos, for variety and beauty of cadence, for the concealment of art, for effect in gaining the object of the orator:—

"If your dependencies have been secured, and their interests promoted, I am driven, in the defence of my client, to remark, that it is mad and preposterous to bring to the standard of justice and humanity the exercise of a dominion founded upon violence and terror. It may and must be true that Mr. Hastings has repeatedly offended against the rights and privileges of Asiatic government, if he was the faithful deputy of a power which could not maintain itself for an hour without trampling upon both;—he may and must have offended against the laws of God and nature, if he was the faithful viceroy of an empire wrested in blood from the people to whom God and nature had given it;—he may and must have preserved that unjust dominion over timorous and abject nations by a terrifying, overbearing, and insulting superiority, if he was the faithful administrator of your government, which, having no root in consent or affection, no foundation in similarity of interests, nor support from any one principle that cements men together in society, could only be upheld by alternate stratagem and force. The unhappy people of India, feeble and effeminate as they are from the softness of their climate, and subdued and broken as they have been by the knavery and strength of civilisation, still occasionally start up in all the vigour and intelligence of insulted nature:—to be governed at all, they must be governed with a rod of iron; and our empire in the East would have been long since lost to Great Britain, if civil and military prowess had not united their efforts to support an authority which Heaven never gave,—by means which it never can sanction.

"Gentlemen, I think I can observe that you are touched with this way of considering the subject; and I can account for it. I have not been considering it through the cold medium of books, but have been speaking of man and his nature, and of human dominion, from what I have seen of them myself, amongst reluctant nations submitting to our authority. I know what they feel, and how such feelings can alone be repressed. I have heard them in my youth from a naked savage, in the indignant character of a prince surrounded by his subjects, addressing the governor of a British colony, holding a bundle of sticks as the notes of his unlettered eloquence. 'Who is it,' said the jealous ruler

over the desert encroached upon by the restless foot of English adventurers, 'who is it that causes this river to rise in the high mountains, and to empty itself into the ocean? Who is it that causes to blow the loud winds of winter, and that calms them again in the summer? Who is it that rears up the shade of those lofty forests, and blasts them with the quick lightning at his pleasure? The same Being who gave to you a country on the other side of the waters, and gave ours to us: and by this title we will defend it,' said the warrior, throwing down his tomahawk upon the ground, and raising the war-sound of his nation. These are the feelings of subjugated men all round the globe; and, depend upon it, nothing but fear will control where it is vain to look for affection.

"But under the pressure of such constant difficulties, so dangerous to national honour, it might be better, perhaps, to think of effectually securing it altogether, by recalling our troops and our merchants, and abandoning our Asiatic empire. Until this be done, neither religion nor philosophy can be pressed very far into the aid of reformation and punishment. If England, from a lust of ambition and dominion, will insist on maintaining despotic rule over distant and hostile nations, beyond all comparison more numerous and extended than herself, and gives commission to her viceroys to govern them, with no other instructions than to preserve them and to secure permanently their revenues,—with what colour or consistency of reason can she place herself in the moral chair, and affect to be shocked at the execution of her own orders, adverting to the exact measure of wickedness and injustice necessary to their execution, and complaining only of the *excess* as the immorality;—considering her authority as a dispensation for breaking the commands of God, and the breach of them as only punishable when contrary to the ordinances of man? Such a proceeding, gentlemen, begets serious reflections. It would be, perhaps, better for the masters and servants of all such governments to join in supplication that the great Author of violated humanity may not confound them together in one common judgment."

I will only add the conclusion of his reasoning against punishing every licence of expression into which writers, warm with their subjects, may be betrayed:—

"From minds thus subdued by the terrors of punishment there could issue no works of genius to expand the empire of human reason, nor any masterly compositions on the general nature of government, by the help of which the great commonwealths of mankind have founded their establishments; much less any of those useful applications of them to critical conjunctures, by which, from time to time, our own constitution, by the exertions of patriot citizens, has been brought back to its standard. Under such terrors all the great lights of science and civilization must be extinguished: for men cannot communicate their free thoughts to one another with a lash held over their heads. It is the nature of every thing that is great and useful, both in the animate and

inanimate world, to be wild and irregular; and we must be contented to take them with the alloys which belong to them, or live without them. Genius breaks from the fetters of criticism; but its wanderings are sanctioned by its majesty and wisdom when it advances in its path: subject it to the critic, and you tame it into dulness. Mighty rivers break down their banks in the winter, sweeping to death the flocks which are fattened on the soil that they fertilise in the summer. Tempests occasionally shake our dwellings and dissipate our commerce; but they scourge before them the lazy elements which without them would stagnate into pestilence. In like manner, Liberty herself, the last and best gift of God to his creatures, must be taken just as she is. You might pare her down into bashful regularity, and shape her into a perfect model of severe scrupulous law; but she would then be Liberty no longer: and you must be content to die under the lash of this inexorable justice, which you had exchanged for the banners of freedom."

I have been told by my father-in-law, the late Lord Abinger, who was present in court when this speech was delivered, that the effect upon the audience was wholly A.D. 1790. unexampled;—they all actually believed that they saw before them the Indian chief with his bundle of sticks and his tomahawk;—their breasts thrilled with the notes of his unlettered eloquence,—and they thought they heard him raise the war-sound of his nation. When we now in our closet read the speech with enthusiasm, what must indeed have been the feelings of those on whom its impression was aided by the voice, the eye, the action of the speaker!—It is a curious fact, however, that the jury deliberated two hours before they found a verdict of *Not GUILTY*. In mitigation of their doubts, and to add to the triumph of the advocate, it should be stated that this trial took place before Mr. Fox's Libel Act, at a time when juries were told by judges that their only province was to consider whether the writing alleged to be libellous had been published by the defendant.<sup>5</sup>

After his special retainers for the Summer circuit were over, the fatigued barrister went to Paris for a few weeks to witness the progress of the Revolution, and when he came back he expressed high admiration of what he had seen;—but I rather suspect that, from his love of fun and frolic, he had mystified a little the solemn and severe Romilly, who, in a letter then written to Dumont, says, "Erskine is returned from Paris a violent democrat. He has had a coat made of

the uniform of the Jacobins, with buttons bearing this inscription, ‘ *Vivre libre ou mourir* ;’ and he says he intends to wear it in the House of Commons.”<sup>b</sup>

On the dissolution of Parliament, which took place in the autumn of this year, Erskine was again returned for Portsmouth, and he continued to represent that borough till he was raised to the peerage. Upon various occasions he added considerable weight to the resistance offered by the Whig Opposition to unconstitutional measures ; but, perhaps, it would have been as well if he had contented himself with the fame of a great advocate, which his genius had shown to be at least equal to that of a great parliamentary debater.

On the first question which drew him forth I think he was decidedly wrong. Misled by pity for Hastings, or by dislike to Burke, he went against his party and against clear principles of constitutional law, in contending that the grand impeachment was at an end by the dissolution. In his speech on this subject he actually broke down—and, suddenly resuming his seat, he pleaded as an excuse the fatigue he had gone through in the early part of the day, and the extreme heat of the House. Next evening he resumed his argument—but with no success, although he spoke from copious notes of all the authorities in point. Pitt, following, was very severe upon him ; and, in answer to his remark that the country should be governed by law, Burke observed that “ he should be glad to see the country governed by law, *but not by lawyers*.” In replying to the complaint of the enormous length of the trial, Burke asked “ whether the learned gentleman remembered, that if the trial had continued three years, the oppressions had continued twenty?—whether, after all, there were hour-glasses for measuring the grievances of mankind?—or whether they whose ideas never travelled beyond a *nisi prius* case were better qualified to judge what ought to be the length of an impeachment, than a rabbit who breeds six times a year was able to judge of the time proper for the gestation of an elephant?” Burke likewise sneered at his note-book—first calling it a “ pamphlet,” and then likening him to David armed with a stone and a sling—“ but with the difference in his case that they could do no execution.” Erskine declared that the “ pamphlet” was nothing more than a collection of precedents copied by a friend of his for his greater convenience in referring to them.—He was properly beaten

<sup>b</sup> Romilly's Memoirs, i. 408.



by 143 to 30.<sup>i</sup> He likewise ineffectually opposed the appointment of new managers to conduct the impeachment against the sense of a great majority of both parties.<sup>k</sup>

When the "Law of Libel" was brought under the consideration of the House, the learned member for Portsmouth might have been expected to be at last May, 1791. placed upon a pinnacle; but, even then, he did not advance his parliamentary reputation. In rising to second Mr. Fox's motion—for leave to bring in "a Bill to declare the Rights of Jurors to decide generally on the merits of the case in Prosecutions for Libel," he offended the House by making his professional character too prominent, and by an unlucky touch of vanity. He observed that he had nothing new to bring forward on the subject; for, having been counsel in numerous trials (*which were in everybody's hand*) involving the existence of the liberty of the Press, he had urged all that could be said, and that to attempt again to speak upon the same subject appeared to him "like telling a tale that has been told." He did, nevertheless, speak at considerable length; and bringing out his commonplaces, without freshness or life, they seem only to have vexed the dull ear of the drowsy listeners.<sup>m</sup>

On Mr. Grey's motion for a reform in Parliament, however, he defended with animation the proceedings of the Society of the Friends of the People, of which he was April, 1792. a member; and he animadverted with good effect on the tergiversation of Mr. Pitt, who, having been the most zealous of reformers, was now an enemy to all reform.

From the progress of the French Revolution the world was rapidly assuming a new aspect. In England there was a division among the Whigs,—one section of the party viewing the movement as favourable to general liberty, and another dreading that it would introduce confusion into this country. To the former belonged Erskine; and to the latter his patron, the Prince of Wales. Whoever may question the prudence of his conduct at this juncture, all must admire his spirit and his disinterestedness. Regardless of present favour and of future promotion, as compared with the discharge of his duty, he resisted all solicitations to join the "Alarmists," although if he had done so he was sure of immediately sharing with them the patronage of the Crown. At the commencement of his political career he had attached himself to Mr. Fox; and

<sup>i</sup> 28 Parl. Hist. 1035, 1074, 1163, 1171.

<sup>k</sup> *Ib.* 1258.

<sup>m</sup> 29 Parl. Hist. 577, 593, 598.

to *his* principles, through good report and through evil report, he ever adhered.

In consequence, he severely censured the policy of seeking to oppose Jacobinism by new penal laws. On one occasion he observed with much force : " The question is, whether the Constitution is to be preserved by coercion, or in its own spirit and by its own principles—whether you choose to create disaffection and enmity in the people, or to conciliate them by the language of confidence and affection ? Say to them frankly and sincerely, ' There is your Constitution, handed down to you from your fathers—created by their courage, and preserved and improved from age to age by their wisdom and virtue : it is now yours, with all its blessings, and it depends upon your love and attachment for its support.' Instead of loading them with abuse and calumny, we ought to meet their complaints, to redress their grievances, and, by granting them a fair representation, remove the ground of their discontent."<sup>a</sup>

In a violent attack on the " Traitorous Correspondence Bill," he said : " It is urged that the circumstances of the time call for this extraordinary measure. I desire to know what are those circumstances which can justify lessening or endangering the freedom of the country. I know of nothing which has happened, except that a false alarm has been propagated for the purpose of strengthening the hands of Government, and weakening public liberty ; and by this artifice Ministers are to have unbounded confidence, and their opponents are to be stigmatised by distrust, and libelled by suspicions of treason and rebellion."<sup>o</sup>

He made another elaborate speech in favour of parliamentary reform, bringing forward most of the arguments which proved triumphant forty years after,—but so low was the cause at that time that the motion was rejected by a majority of 282 to 41.<sup>p</sup>

We must again attend Erskine to the Forum. His firmness was now put to a severe trial—and he gave a memorable example of what may be expected from an English advocate. Wisely, the Government had taken no notice of the " First Part of Paine's Rights of Man," and it had attracted little notice ; but the " Second Part," containing some offensive ribaldry about William III. and George I., with very indecorous aspersions upon the monarchical and aristocratical

<sup>a</sup> 30 Parl. Hist. 58.<sup>o</sup> Ib. 590<sup>p</sup> Ib. 326, 925.

branches of our Government, its circulation was infinitely increased by the Attorney-General filing an *ex-officio* information against the author. A retainer for the defendant was sent to Erskine, and the question was, "whether he should accept it?" He himself did not hesitate one moment; for although if he had read the publication he must have highly disapproved of it, the cause was to be tried in the Court in which he practised as a barrister; and he was bound, when called upon, to defend the party accused, to the best of his ability, by all legal and honourable means.

However, several of his friends earnestly persuaded him to refuse the retainer, and among these was Lord Loughborough, who ought to have known better, but who thought that at last he had the Great Seal within his grasp. Erskine himself, many years after, gave the following amusing account of their interview:—"In walking home one dark November evening across Hampstead Heath, I met Loughborough coming in an opposite direction, apparently with the intention of meeting me. He was also on foot. 'Erskine,' he said, 'I was seeking you, for I have something important to communicate to you.' There was an unusual solemnity in his manner, and a deep hollowness in his voice. We were alone. The place was solitary. The dusk was gathering around us, and not a voice—not a footstep—was within hearing. I felt as Hubert felt when John half opened, half suppressed, the purpose of his soul, in that awful conference which Shakspeare has so finely imagined. After a portentous pause he began:—'Erskine, you must not take Paine's brief.'—'But I have been retained, and I will take it, by G—d,' was my reply." Messages to the same effect were brought to him from the Prince of Wales; but he was inexorable. By many well-meaning people, ignorant of professional etiquette, and of what is required by a due regard for the proper administration of criminal justice, his obstinacy was much condemned, and scurrilous attacks were made upon him in the Government newspapers.

At last the day of trial arrived, and he was at his post. Here he met with an unexpected difficulty, for the Attorney-General produced a letter, lately written from Paris by Thomas Paine's own hand, in which he acknowledged himself to be the author, and applied a number of most opprobrious epithets both to the King and the Prince of Wales. Erskine, almost appalled, thus began:—

“Gentlemen, if the Attorney-General felt the painful embarrassments he has described, you may imagine what *MINE* must be; he can only feel for the august character he represents in this place as a subject for his Sovereign—too far removed by custom from the intercourse which generates affection to produce any other sentiments than those that flow from a relation common to us all: but it will be remembered that I stand in the same relation towards another great person more deeply implicated by this supposed letter, who, not restrained from the cultivation of personal attachments by those qualifications which must always secure them, has exalted my duty to a Prince into a warm and honest affection between man and man.” He next alludes to the attacks made upon himself, connected with this cause: “Every man within hearing at this moment, nay, the whole people of England, have been witnesses to the calumnious clamour that, by every art, has been raised and kept up against me. In every place where business or pleasure collects the people together, day after day, my name and character have been the topics of injurious reflection. And for what? only for not having shrunk from the discharge of a duty which no personal advantage recommended, and which a thousand difficulties repelled. But, gentlemen, I have no complaint to make against the printers of these libels, nor even against their authors: the greater part of them, hurried perhaps away by honest prejudices, may have believed they were serving their country by rendering me the object of its suspicion and contempt; and if there have been amongst them others who have mixed in it from personal malice and unkindness, I thank God I can forgive *them* also. Little indeed did they know me, who thought that such calumnies would influence my conduct: I will forever—at all hazards—assert the dignity, independence, and integrity of the *ENGLISH BAR*, without which impartial justice, the most valuable part of the English Constitution, can have no existence. From the moment that any advocate can be permitted to say that he *will*, or will *not*, stand between the Crown and the subject arraigned in the Court where he daily sits to practise, from that moment the liberties of England are at an end. If the advocate refuses to defend from what *he may think* of the charge or of the defence, he assumes the character of the Judge; nay, he assumes it before the hour of judgment; and, in proportion to his rank and reputation, puts the heavy influence of perhaps a mistaken opinion into the scale against the accused, in whose favour the benevolent principle of English law makes all presumptions, and which commands the very Judge to be his counsel.” He then proceeds to the defence, and lays down, with admirable discrimination, the limits of free discussion on political subjects: “The proposition which I mean to maintain, as the basis of the liberty of the press, and without which it is an empty sound, is this:—that every man not intending to mislead, but seeking to enlighten others with what his own reason and conscience, however erroneously, have dictated to him as truth, may address himself to the universal reason of a whole nation, either upon the subject of governments in general, or upon that of our own particular country;

that he may analyse the principles of its constitution, point out its errors and defects, examine and publish its corruptions, and warn his fellow-citizens against their ruinous consequences, and exert his whole faculties in pointing out the most advantageous changes in establishments which he considers to be radically defective, or sliding from their object by abuse. All this every subject of this country has a right to do, if he contemplates only what he thinks would be for its advantage, and but seeks to change the public mind by the conviction that flows from reasonings dictated by conscience. If, indeed, he writes what he does not think; if, contemplating the misery of others, he wickedly condemns what his own understanding approves; or, even admitting his real disgust against the government or its corruptions, if he calumniates living magistrates, or holds out to individuals that they have a right to run before the public mind in their conduct; that they may oppose by contumacy or force what private reason only disapproves; that they may disobey the law because their judgment only condemns it; or resist the public will, because they honestly wish to change it,—he is then a criminal upon every principle of rational policy, as well as upon the immemorial precedents of English justice; because such a person seeks to disunite individuals from their duty to the whole, and excites to overt acts of misconduct in a part of the community, instead of endeavouring to change, by the impulse of reason, that universal assent, which in this and every country constitutes the law for all.”

But his difficulty was to bring Paine's book within the category of useful publications; and so little impression did he now make upon the jury, that as soon as he had concluded, without hearing the reply or the summing up, they found a verdict of GUILTY.

As a reward for the brave and honest defence which his duty compelled him to make for his client, he was, to the lasting disgrace of those from whom the measure proceeded, removed from his office of Attorney-General to the Prince of Wales. He thus adverted to the fact in his defence of Horne Tooke:—"Gentlemen, Mr. Tooke had an additional and a generous motive for appearing to be the supporter of Mr. Paine;—the Constitution was wounded through his sides. I blush, as a Briton, to recollect that a conspiracy was formed among the highest orders to deprive this man of a British trial. This is the clue to Mr. Tooke's conduct, and to which, if there should be no other witnesses, I will step forward to be examined. I assert that there was a conspiracy to shut out Mr. Paine from the privilege of being defended: he was to be deprived of counsel, and I, who now speak to you, was threatened with the loss of office if I appeared as his advocate. I was told in plain terms that I must not defend Mr. Paine.

I did defend him, and I did lose my office." Of this transaction Lord Erskine, a few years before his death, gave a detailed account, in a letter addressed to Mr. Howell, editor of the *State Trials* :<sup>a</sup>

"When Attorney-General to the Prince of Wales, I was retained by Thomas Paine in person to defend him on his approaching trial for publishing the Second Part of his '*Rights of Man*;' but it was soon intimated to me by high authority, that it was considered to be incompatible with my situation, and the Prince himself, in the most friendly manner, acquainted me that it was highly displeasing to the King, and that I ought to endeavour to explain my conduct, which I immediately did in a letter to his Majesty himself, in which, after expressing my sincere attachment to his person, and to the constitution of the kingdom, attacked in the work which was to be defended, I took the liberty to claim, as an invaluable part of that very constitution, the unquestionable right of the subject to make his defence by any counsel of his own free choice, if not previously retained or engaged by office from the Crown; and that there was no other way of deciding whether that was or was not my own situation as Attorney-General to the Prince, than by referring, according to custom, that question to the Bar, which I was perfectly willing, and even desirous, to do. In a few days afterwards I received, through my friend the late Admiral Paine, a most gracious message from the Prince, expressing his deep regret in feeling himself obliged to receive my resignation, which was accordingly sent. But I owe it to his Royal Highness to express my opinion, that, circumstanced as he was, he had no other course to take in those disgraceful and disgusting times, and that my retainer for Paine was made a pretext by the King's Ministers for my removal, because my worthy and excellent friend Sir A. Pigot was removed from the office of the Prince's Solicitor-General at the very same moment, although he had nothing whatever to do with Mr. Paine or his book. The fact is, that we were both, I believe, at that time members of a society for the reform of Parliament, called '*The Friends of the People*.' It would, however, be most unjust as well as ungrateful to the Prince Regent not to add, that in a few years afterwards his Royal Highness, of his own mere motion, sent for me to Carlton House, whilst he was still in bed under a severe illness, and, taking me most graciously by the hand, said to me, that though he was not at all qualified to judge of retainers, nor to appreciate the correctness or incorrectness of my conduct in the instance that had separated us, yet that, being convinced I had acted from the purest motives, he wished most publicly to manifest that opinion, and therefore directed me to go immediately to Somerset House, and to bring with me, for his execution, the patent of Chancellor to his Royal Highness, which he said he had always designed for me; adding, that owing to my being too young when his establishment was

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<sup>a</sup> *St. Tr.* vol. xxvi. p. 715.

first fixed, he had declined having a Chancellor at that time; that during our separation he had been more than once asked to revive it, which he had refused to do, looking forward to this occasion; and I accordingly held the revived office of Chancellor to the Prince of Wales until I was appointed Chancellor to the King, when I resigned it, in conformity with the only precedent in the records of the Duchy of Cornwall, viz. that of Lord Bacon, who was Chancellor to Henry Prince of Wales, and whose resignation is there recorded, because of his acceptance of the Great Seal in the reign of King James the First."

Whether the prosecution of "Paine's Rights of Man" was *discreet* or not, no one could justly complain of it as an infringement of public liberty, but Lord Loughborough was soon after Chancellor, and the "Reign of Terror" began. If not resisted by Erskine, to what might it not have led? I have already mentioned the case of John Frost, the first victim, prosecuted on the information of a man who had acted the part of a Government spy, for foolish words he had spoken after drinking freely in a coffee-house.\* In the speech delivered by Erskine in defence, there were some passages of uncommon power and beauty:—

"Gentlemen, it is impossible for me to form any other judgment of the impression which such a proceeding altogether is likely to make upon your minds, than that which it makes upon my own. In the first place, is society to be protected by the breach of those confidences and by the destruction of that security and tranquillity which constitute its very essence everywhere, but which, till of late, most emphatically characterised the life of an Englishman? Is Government to derive dignity and safety by means which render it impossible for any man who has the least spark of honour to step forward to serve it? Is the time come when obedience to the law and correctness of conduct are not a sufficient protection to the subject,—but that he must measure his steps, select his expressions, and adjust his very looks, in the most common and private intercourses of life? Must an English gentleman in future fill his wine by a measure, lest in the openness of his soul, and whilst believing his neighbours are joining with him in that happy relaxation and freedom of thought which is the prime blessing of life, he should find his character blasted, and his person in a prison? Does any man put such constraint upon himself in the most private moments of his life, that he would be contented to have his loosest and lightest words recorded, and set in array against him in a court of justice? Thank God, the world lives very differently, or it would not be worth living in. There are moments when jarring opinions may be given without inconsistency, when Truth herself may

be sported with without the breach of veracity, and when well-imagined nonsense is not only superior to, but is the very index to, wit and wisdom. I might safely assert,—taking, too, for the standard of my assertion the most honourably correct and enlightened societies in the kingdom,—that if malignant spies were properly posted, scarcely a dinner would end without a duel and an indictment.—When I came down this morning, and found, contrary to my expectation, that we were to be stuffed into this miserable hole in the wall [*the Court of Common Pleas*], to consume our constitutions, suppose I had muttered, passing along through the gloomy passages, ‘What! is this cursed trial of Hastings going on again? Are we to have no respite? Are we to die of asthma in this damned corner? I wish to God the roof would come down, and abate the impeachment,—Lords, Commons, and all together.’ *Such a wish proceeding from the mind* would be desperate wickedness, and the serious expression of it a high and criminal contempt of Parliament. Perhaps the bare utterance of such words without meaning would be irreverent and foolish; but still, if such expressions had been gravely imputed to me as the result of a malignant mind, seeking the destruction of the Lords and Commons of England, how would they have been treated in the House of Commons on a motion for my expulsion? How! the witness would have been laughed out of the House before he had half finished his evidence, and would have been voted to be too great a blockhead to deserve a worse character. Many things are, indeed, wrong and reprehensible, that neither do nor can become the object of criminal justice, because the happiness and security of social life, which are the very end and object of all law and justice, forbid the communication of them; because the spirit of a gentleman, which is the most refined morality, either shuts men’s ears against what should not be heard, or closes their lips with the sacred seal of honour. This tacit but well-understood and delightful compact of social life is perfectly consistent with its safety. The security of free governments, and the unsuspecting confidence of every man who lives under them, are not only compatible but inseparable. It is easy to distinguish where the public duty calls for the violation of the private one. Criminal intention—but not indecent levities—not even grave opinions, unconnected with conduct, are to be exposed to the magistrate; and when men, which happens but seldom, without the honour or the sense to make the due distinctions, force complaints upon Governments which they can neither approve of nor refuse to act upon, it becomes the office of juries—as it is yours to-day—to draw the true line in their judgments, measuring men’s conduct by the safe standards of human life and experience.”

Such was the infelicity of the times, however, that Frost was set in the pillory, expelled from his profession, and ruined for life.

The next prosecution of this sort had an issue which should have warned the Government that English juries were still awake to a sense of their duty, as guardians of the rights of



Englishmen. The "Morning Chronicle," conducted with great ability and with a uniform respect for private character, as well as for the principles of our limited monarchy, had become exceedingly obnoxious by supporting parliamentary reform and the other measures for which the Foxite Whigs were contending; and the Attorney-General filed an *ex-officio* information against Mr. Perry and Mr. Gray, the proprietors of that journal, for having inserted in it an address of a society for political information, held at Derby, complaining of the state of the representation of the people, and other abuses, which they alleged required a remedy. When the case first stood for trial, only seven special jurors attending, the Attorney-General would not pray a *tales*, but, the next term, moved to have another special jury struck. Erskine opposed this proceeding, and established a most important doctrine, that "the special jury originally summoned must be re-summoned, and try the cause;" so as to deprive the Crown officers of the power of postponing a trial till they have a jury to their mind.\* When the case again came on before the same jury, Erskine began his address by saying,—

"If I had the slightest idea that the two gentlemen prosecuted as proprietors of the 'Morning Chronicle,' with whom I have an intimate acquaintance, were guilty of malicious and wicked designs against the State, as charged in the information, I should leave the task of defending them to others. Not that I conceive I have a right to refuse my professional assistance to any person who asks it; but I have for a day or two past been so seriously indisposed, that I feel myself scarcely equal to the common exertion of addressing the Court; and it is only from the fullest confidence in the innocence of the defendants that I come forward, for a very short space, to solicit the attention of the jury. You, gentlemen, indeed, are the sole arbitrators in this cause, and to you it belongs to decide on the whole merits of the question."—This being the first trial under the Libel Act, he said, "No one ought now to contend, as the Attorney-General has done, that the criminality of the defendant in such a case is an inference of law from the fact, but (if, as one of the authors of the statute, I may be allowed to interpret its meaning) it connects and involves the law and the fact together, and obliges the jury to find in this crime, as in all others, by extrinsic as well as intrinsic means, the mind and intention with which the fact was committed. If you, gentlemen, can think that the defendants were actuated by the motive—not of wishing to reform and restore the beautiful fabric of our Constitution, somewhat impaired by time, but to

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\* Lord Kenyon was at first very adverse, and said "it would be very strange if the law were so."

subvert and destroy it, and to raise on its ruins a democracy or anarchy—an idea at which the mind of every honest man must shudder—you will find them guilty. Nay, if any one man knows or believes them to be capable of entertaining such a wish, or will say he ever heard, or had cause to know, that one sentence intimating any thing of that nature ever fell from the lips of any one of them, I will give them up. But it seems the circumstances of the times render any opinion in favour of a reform of parliament peculiarly improper, and even dangerous; and the recommendation of it, in the present moment, must be ascribed to mischievous intentions. Were I to address you, gentlemen, to petition for a reform of parliament, I would address you now, as the season most fit for the purpose; I would address you now, because we have seen in other countries the effect of suffering evils to prevail so long in a government, and to increase to such a pitch, that it became impossible to correct them without bringing on greater evils than those which it was the first object of the people to remove; that it became impossible to remedy abuses without opening a door to revolution and anarchy. There are many diseases which might be removed by gentle medicines in their beginning, and even corrected by timely regimen, which, when neglected, are sure to bring their victims to the grave.”—Having commented at considerable length upon the article alleged to be libellous, he said, “My learned friend cannot produce a single instance in the course of seventeen years—the term of my acquaintance with the defendants—in which they have been charged in any court with public libel, or with private defamation; and I challenge the world to produce a single instance in which they have made their journal the vehicle of slander, or in which they have published a single paragraph to disturb the happiness of domestic life, to wound the sensibility of innocence, or to outrage the decencies of well-regulated society. They have displayed in the conduct of their paper a degree of learning, taste, and genius, superior to what has distinguished any similar undertaking. You may differ in opinion with them on public questions, but you would not for that reason consign them to a gaol. I appeal to you, gentlemen, whether the abuses pointed out in this article do not exist in the Constitution, and whether their existence has not been admitted by all parties, both the enemies and the friends of reform? I will not say which party is right, but God forbid that honest opinion should ever become a crime.”

*Lord Kenyon*: “There may be morality and virtue in this paper: and yet, *apparently*, LATET ANGUIS IN HERBA. There may be much that is good in it, and yet there may be much to censure.”

The jury, after long deliberation, returned a verdict of “Publishing, but with no malicious intent;” and the Judge refusing to record this verdict, they found a general verdict of NOT GUILTY.<sup>1</sup>

The next Government prosecution assumed a very serious

<sup>1</sup> Erskine's Speeches, ii. 371—453.

aspect, but was likewise so unfounded, that the parties accused, being ably defended by Erskine, were acquitted, notwithstanding the prejudice excited against them as parliamentary reformers. Mr. Walker, a respectable master-manufacturer at Manchester, and several others, were arrested for high treason, and were tried for a conspiracy to overturn the Constitution, and to assist the French in invading the realm. Some arms having been found in Mr. Walker's house, Dunn, a Government spy, swore that they had been purchased for the purpose of rebellion, and that he had been present at several consultations among the prisoners, when an insurrection had been planned, in which the arms were to be used against the King's troops. Erskine demolished him in cross-examination, and made an admirable speech to the jury—opening the evidence he was to give, to prove that the arms (which were by no means of a formidable description) had been procured to enable Mr. Walker to defend his house against the attacks of a mob. Finding that the jury were completely with him, and that his clients were safe—in a manner very unusual with him he concluded by indulging himself in a vein of pleasantry :—

“ This,” said he, “ is the genuine history of the business, and it must therefore not a little surprise you, that when the charge is wholly confined to the use of arms, Mr. Law should not even have hinted to you that Mr. Walker's house had been attacked, and that he was driven to stand upon his defence,—as if such a thing had never had an existence. Indeed, the armoury which must have been exhibited in such a statement would have but ill suited the indictment or the evidence, and I must therefore undertake the description of it myself. The arms having been locked up, as I told you, in the bedchamber, I was shown last week into this house of conspiracy, treason, and death, and saw exposed to view this mighty armoury, which was to level the beautiful fabric of our Constitution, and to destroy the lives and properties of ten millions of people. It consisted, first, of six little swivels, purchased two years ago at the sale of Livesay, Hargrave, and Co., by Mr. Jackson, a gentleman of Manchester, who is also one of the defendants, and who gave them to Master Walker, a boy of about ten years of age. Swivels, you know, are guns so called because they turn upon a pivot ; but these were taken off their props, were painted, and put upon blocks resembling the carriages of heavy cannon, and in that shape may fairly be called ‘ children's toys.’ You frequently see them in the neighbourhood of London, adorning the houses of sober citizens, who, preferring grandeur to taste, place them upon their ramparts at Mile End or at Islington. Having, like Mr. Dunn,—I hope I resemble him in nothing else,—having like him served his Majesty as a soldier (and I am

April 2,  
1794.

ready to serve again if my country's safety should require it,) I took a close review of all I saw, and observing that the muzzle of one of them was broken off, I was curious to know how far this famous conspiracy had proceeded, and whether they had come into action; when I found that the accident had happened on firing a *feu de joie* upon his Majesty's happy recovery, and that they had been afterwards fired upon the Prince of Wales's birthday. These are the only times that, in the hands of these conspirators, these cannon, big with destruction, had opened their little mouths;—once to commemorate the indulgent and benign favour of Providence in the recovery of the Sovereign, and once as a congratulation to the Heir Apparent of his crown on the anniversary of his birth. I went next, under the protection of the master-general of this ordnance (Mr. Walker's chambermaid), to visit the rest of this formidable array of death, and found a little musketoon about so high (*describing it*). I put my thumb upon it, when out started a little bayonet, like the jack-in-the-box which we buy for children at a fair. In short, not to weary you, gentlemen, there was just such a parcel of arms, of different sorts and sizes, as a man collecting them amongst his friends for his defence, against the sudden violence of a riotous multitude, might be expected to have collected. Here lay three or four rusty guns of different dimensions, and here and there a bayonet or broadsword, covered over with dust and rust, so as to be almost undistinguishable. We will prove by witness after witness, till you desire us to finish, that they were principally collected on the 11th of December, the day of the riot, and that from the 12th in the evening, or the 13th in the morning, they have lain untouched as I have described them; that their use began and ended with the necessity, and that from that time to the present there never has been in the warehouse any machine of war or weapon of destruction, from a piece of artillery to a pop-gun."

The case became so clear that Mr. Law abandoned the prosecution, and the Government spy was convicted of perjury at the same assizes."

" 23 St. Tr. 1055—1166. Erskine's Speeches, iii. 1—62.

## CHAPTER CLXXX.

CONTINUATION OF THE LIFE OF LORD ERSKINE TILL THE CONCLUSION OF  
THE PROSECUTIONS FOR HIGH TREASON AGAINST THE ADVOCATES FOR  
A REFORM IN PARLIAMENT.

NOTWITHSTANDING the unfortunate result of the late State prosecutions, Ministers (it is supposed with a division of opinion in the Cabinet) resolved upon a much more extensive and a much bolder attack on public liberty, which, if it had succeeded, would have placed the lives of the great body of their opponents at their mercy. There were now several societies existing for the professed object of Parliamentary Reform—particularly the “Corresponding Society,” and the “Society for Constitutional Information”—having branch societies in most of the large towns of Great Britain. At their meetings inflammatory and indiscreet speeches were occasionally made, and some of their resolutions and printed addresses were of a very objectionable character, although the principal leaders and the great bulk of the members were attached to the Constitution. Their evil designs and their influence were much over-estimated by the Government, and a still graver error was committed in the means adopted for putting them down. It would have been highly proper to prosecute for a *misdemeanor* the individuals who could have been proved to have uttered seditious language, or to have published seditious writings,—making each party accused answerable for his own acts. But it was thought better to resort to the law of “constructive treason,” which had received such a blow on the trial of Lord George Gordon,—to assert that these societies intended to bring about a revolution,—and therefore to insist that all who belonged to them were to be considered guilty of “compassing the death of our Lord the King,” and ought to die the death of traitors. I have not a doubt that most of those who advised this mode of proceeding, far from being animated by any bloodthirsty disposition, or love of arbitrary power, really believed it the only means of saving the country from anarchy ; although I

suspect that some of them were well pleased to increase the alarm in the public mind,—to throw obloquy upon their political rivals, and to strengthen the foundation of their own power. But, in my humble opinion, severe censure is due either to their judgment or their intentions. Indeed in our times, when an arbitrary application of the criminal law has been abandoned by all parties in the state, we are at a loss to account for an attempt which seems to us not only very unconstitutional, but very foolish,—as it was not accompanied by the abolition of trial by jury.

First came secret committees of the two Houses of Parliament, and upon their reports a bill was passed suspending the Habeas Corpus Act, and containing this most reprehensible recital, to be referred to as *proof* in the prosecutions which were to follow—"that a treacherous and detestable conspiracy had been formed for subverting the existing laws and Constitution, and for introducing the system of anarchy and confusion which had lately prevailed in France."<sup>x</sup> This was more exceptionable in principle than any thing done during the reign of Charles II.; for then the fabricators of the Popish Plot did not think of corroborating the testimony of Oates and Bedloe by a public statute: and there, if the facts alleged had been true, they would have amounted to a plain case of actual treason; whereas here, admitting the truth of all the facts alleged, there was no pretence for saying that any treason contemplated by the legislature had been committed. If this scheme had succeeded, not only would there have been a sacrifice of life contrary to law, but all political "agitation" must have been extinguished in England, as there would have been a precedent for holding that the effort to carry a measure by influencing public opinion through the means openly resorted to in our days, is a "compassing of the death of the sovereign." The only chance of escaping servitude would have been civil war. It is frightful to think of the perils to which the nation was exposed; for, on account of the horror justly caused in England by the murder of Louis XVI. and the other atrocities which had recently been perpetrated at Paris, an attempt which in former days would have excited universal disgust and indignation was now received with considerable favour, and might have been crowned with success. But Erskine and the crisis were framed for each other. He

<sup>x</sup> Stat. 34 Geo. 3, c. 54. This declaration, ministerial majority, was relied upon in the the work of a ministerial committee and a treason trials as proof of the conspiracy.

might have passed through life a well employed barrister, admired by his contemporaries for his skill in winning verdicts, and forgotten as soon as the grave had closed over him. But his contemporaries, who without him might have seen the extinction of freedom among us, saw it, by his peculiar powers, placed upon an imperishable basis.

The Grand Jury for the county of Middlesex found an indictment for high treason against twelve persons who had belonged to these societies, and had professed themselves warm friends to parliamentary reform,—the overt act laid being that they had engaged in a conspiracy to call a convention, the object of which was to bring about a revolution in the country—but it was not suggested that there was any plot against the King's life, or any preparation for force.

The prisoners, upon their arraignment, had Erskine assigned as their counsel, with Gibbs, hitherto only known as a good lawyer, but, from the distinction he now acquired, afterwards Attorney-General and Chief Justice of the Common Pleas. On their declining to be tried jointly, the Attorney-General selected Thomas Hardy, a shoemaker, as the one against whom he could make the strongest case.

This memorable trial began on Tuesday the 28th of October, 1794, at the Old Bailey, before Lord Chief Justice Eyre, and several other Judges, sitting under a special commission of oyer and terminer. Sir John Scott spoke nine hours in opening the case for the prosecution. In the annals of English criminal jurisprudence there had not yet been an instance of a trial for high treason that had not been finished in a single day. When the hour of midnight struck, scarcely any progress had been made in adducing the evidence for the Crown, which was to consist of innumerable speeches made, and resolutions passed, during many months, not only in London, but at Manchester, Sheffield, Norwich, Edinburgh, and many other places, when the prisoner had been at a distance of hundreds of miles,—of toasts at anniversary dinners,—and of voluminous publications issued by the obnoxious societies, or which the societies had approved of, or which had for their authors individual members of the societies supposed to be implicated in the conspiracy.

Erskine, who did not despise any arts by which he might conciliate the jury, expressed his readiness to consent that they should go to their several homes, saying, "I am willing that they shall be as free as air, with the single restriction

that they will not suffer themselves to be approached in the way of influence; and the gentlemen will not think it much that this should be required, *considering the very peculiar nature of this case.*"

An objection, however, was made to the jurymen separating; and it was agreed that they should pass the night under the care of four bailiffs in a large room in an adjoining tavern, in which couches were strewed for them. But before they retired to talk over the subject together, and to ruminate upon it, Erskine, perceiving that a deep impression had been made upon them by the solemn and seemingly candid address of the Attorney-General, was determined to give them some other topic of conversation, and some other food for reflection. As soon, therefore, as the four bailiffs had been sworn to do their duty, he thus spoke, while the jury listened:—

"My Lord, all this immense body of papers has been seized, and been a long time in the hands of the officers of the Crown. We applied to see them, but were refused—we applied to the Privy Council, and were refused—we were referred to your Lordship, because they knew that your Lordship could not grant such a request. Here we are, therefore, with all these papers tumbled upon our hands, without the least opportunity of examining them; and yet from this load of papers, which the Attorney-General took nine hours to read, the act of compassing the King's death is to be collected. I trust your Lordships will be disposed to indulge me—indeed I shall expect, in justice to the prisoner, that I may have an opportunity, before I address the jury upon this mass of evidence, to know what is in it. I declare, upon my honour, as far as relates to myself and my friend who is assigned as counsel for the prisoner, we have no design whatever to trespass upon the patience of the Court, and your Lordships may have seen to-day how little of your time we have consumed. We have no desire upon earth but to do our best to save the man for whom your Lordships have assigned us to be counsel, and whom we believe to be innocent."

The Court sat day by day at eight o'clock in the morning, and continued sitting till past midnight. Erskine's attention was never for one moment relaxed, and he was ever on the watch for an opportunity of exciting the sympathy of the jury by interlocutory speeches,—particularly in arguing questions of evidence.

The proceedings of the Convention at Edinburgh being proffered, he objected that the Crown must first show that they were approved of by Mr. Hardy, saying:—



"I confess I am not very anxious to shut out any evidence—I very probably do not understand it; but I do not see how it bears upon the case. He is charged with 'compassing and imagining the death of our Sovereign Lord the King,' whose life is dear, my Lord, to all the kingdom. No act can be given in evidence before your Lordships, nor will I sit silent to hear any act given in evidence that does not tend to show the prisoner at the bar to have had that wicked intention. When I stand here defending the man who holds his life under the law (and I am not defending his life only, but my own life, and the life of every man in the country), I must take care that the rules of evidence are observed."

On a subsequent occasion, in objecting to similar evidence, he tried to awaken the jury to the consequences of this proceeding by observing,—

"How many thousands of his Majesty's subjects are to be brought to this place, I cannot tell; for the conspiracy which is alleged comprehends all the members of every one of these societies. I say, in my judgment, upon the evidence that is before the Court, every man who has been a member of any of these societies, every man who has been connected with their proceedings, is liable to be put in the same situation as Mr. Hardy, and, according to the rule contended for, any thing written by any one person belonging to any of these societies would be equally evidence against him."

His object was to keep in check, without insulting, Lord Chief Justice Eyre, who had, in addressing the Grand Jury, referred to the recent Act of Parliament as proof of the conspiracy, and who, though he very conscientiously ruled the questions of law which arose, evidently had a leaning towards the prosecution.

While a Crown witness was under cross-examination, and equivocating so as to revolt the jury, the Chief Justice, interposing, took him out of the counsel's hands, and in a coaxing manner repeated the question to him. *Erskine*: "I am entitled to have the benefit of this gentleman's deportment, if your Lordship will just indulge me for one moment." *L. C. J. Eyre*: "Give him fair play." *Erskine*: "He has certainly had fair play. I wish we had as fair play,—but that is not addressed to the Court." *Attorney-General*: "Whom do you mean?" *Erskine*: "I say the prisoner has a right to fair play." *Garrow*: "But you declared that it was not said to the Court." *Erskine*: "I am not to be called to order by the Bar."

Being exceedingly afraid that an impression might be made

upon the minds of the jury, which he might not be able to remove, by an infamous paper pretending to be a play-bill, to announce "an entertaining farce called LA GUILLOTINE, or GEORGE'S HEAD IN A BASKET,"—before it was read he said, most irregularly, but with an air that in him alone excused the irregularity, "The paper was fabricated by the spies who support the prosecution!" *Attorney-General*: "You shall not say that till you prove it." *Erskine*: "I shall prove it."

He showed admirable skill in regulating his questions to the Crown witnesses by the disposition which they displayed. One ex-member of the Corresponding Society, whom he found very pliable, he thus interrogated. Q. "Had you any idea, when you became a member, or while you continued there, by parliamentary reform to touch the King's Majesty or the House of Lords?" A. "No, never; I never had that idea." Q. "Never in your life?" A. "No." Q. "I ask you, in the presence of God, to whom you will answer, had you any idea of destroying the King or the House of Lords?" A. "No, God forbid!" Q. "Then I understand you to say, upon the oath you have taken, and subject to the consequences here and hereafter, that there was no such idea either in your own mind, or, from what you know from others, from what they said and what they did, in the minds of any other of the members?" A. "Never." Q. "Have you any reason to believe—I ask you to look upon your own soul when you answer the question—that, though they might not intend mischief originally, when associated they began to intend mischief?" A. "No, never."

Wishing to exhibit the consummate conductor of a cause before a jury, not a mere rhetorician, I add the following dialogue, which, at least to those familiar with such scenes, strikingly exhibits his bearing to the Court and to his adversary. A witness, who pretended to relate from notes he said he had taken of the proceedings of a reform society, having been asked for a date, and having answered that he *thought* it was about such a time, Erskine exclaimed, "None of your *thinking*, when you have the paper in your hands!" *Witness*: "I have not a memorandum of the date." *Erskine*: "What date have you taken, good Mr. Spy?" *Witness*: "I do not think on such an occasion being a spy is any disgrace." *Eyre, C. J.*: "These observations are more proper when you come to address the jury." *Attorney-General*: "Really that is not a proper way to examine witnesses. Lord Holt held strong language to such

sort of an address from a counsel to a witness who avowed himself a spy." *Erskine* : "I am sure I shall always pay that attention to the Court which is due from me ; but I am not to be told by the Attorney-General how I am to examine a witness !" *Attorney-General* : "I thought you had not heard his Lordship." *Erskine* : "I am much obliged to his Lordship for the admonition he gave me. I heard his Lordship, and I heard you,—whom I should not have heard."

He would even try to ingratiate himself with the jury by being facetious, although there was such a weight upon his own mind. He asked a spy, who had assumed the name of *Douglas*, what was his true name? *Witness* : "As for taking the name of *Douglas*, I took it from a play-bill." *Erskine* : "Pray how long did you play the part of *Norval*?" The jury laughed, and disbelieved all the witness had said.

At last, when the Court was about to adjourn at two o'clock on Saturday morning to the usual hour of eight the same day, the Attorney-General intimated that he should not take above forty minutes longer to finish his case. *Erskine*, then pointing out very feelingly the embarrassment of his situation, as he had not had time to read any part of the evidence, prayed a few hours to enable him to arrange his papers and prepare for the defence. *Eyre*, most indecently, under pretence of consulting the convenience of the jury, refused the request, and proposed that the evidence for the prisoner should proceed, while the counsel was preparing his speech, observing very coolly, that "it was a matter of indifference in what order they were presented." *Erskine* : "I should be sorry to put the jury to any inconvenience : I do not shrink from my duty, but I assure your Lordship that during the week I have been nearly without natural rest, and that my physical strength is quite exhausted." *Eyre, C. J.* : "What is it you ask for?" *Erskine* : "As I stated before, the Attorney-General found it necessary to consume nine hours. I should not consume half that time, if I had an opportunity of doing that which I humbly request of the Court." *Eyre, C. J.* : "We have offered you an expedient ; neither of you say whether you accept it?" *Gibbs* spurned at it ; and then *Erskine*, pointing out how it might prejudice the prisoner, on trial for his life, proposed an adjournment till twelve next day. *Eyre* reluctantly agreed to eleven, but would make no further concession. *Erskine* : "I should be glad if your Lordships would allow another hour." *Eyre, C. J.* : "I feel so much for the situation of the

jury, that, on their account, I cannot think of it." *Erskine*: "My Lord, I never was placed in such a situation in the whole course of my practice before;—however, I will try to do my duty." *Jury*: "My Lord, we are extremely willing to allow Mr. Erskine another hour, if your Lordship thinks proper." *Eyre, C. J.*: "As the jury ask it for you, I will not refuse you."

Cheered by this good omen, Erskine went home, and, after a short repose, arranged the materials of "a speech which will live for ever."<sup>7</sup>

He began at two o'clock on Saturday afternoon, and spoke seven hours—a period that seemed very short to his hearers, and in reality was so, considering the subjects he had to deal with, and the constitutional learning, the powerful reasoning, the wit, and the eloquence which he condensed into it. This wonderful performance must be studied as a whole, by all who are capable of understanding its merits; for the enunciation of principles is so connected with the inferences to be drawn from the evidence, and there is such an artful though seemingly natural succession of topics to call for the pity and the indignation of the jury—to captivate their affections and to convince their understandings—that the full beauty of detached passages cannot properly be appreciated. But some I must introduce, or this memoir might be considered very defective. Having judiciously commenced with eulogising the Constitution of England, and reprobating the violence which had disgraced the revolution in France, he prayed that, if this prosecution had been commenced to avert from us the calamities incident to civil confusion, the prisoner should not be made a sacrifice:

"Let not *him* suffer under vague expositions of tyrannical laws more tyrannically executed. Let not *him* be hurried away to predoomed execution, from an honest enthusiasm for the public safety. I ask for him a trial by this applauded Constitution of our country: I call upon you to administer the law to *him* according to our own wholesome institutions, by its strict and rigid letter. However you may eventually disapprove of any part of his conduct, or, viewing it through a false medium, may think it even wicked, I claim for him as a subject of England that

<sup>7</sup> "I have been indulged by Mr. Rogers, the celebrated author of the 'Pleasures of Memory,' and other poems, with Mr. Horne Tooke's copy of Hardy's trial, where I find, in Mr. Tooke's handwriting, at the end of

this argument, the following remarkable note: 'THIS SPEECH WILL LIVE FOR EVER.'"  
—*Editor of the State Trials*, vol. xxiv. p. 877.—I have myself been lately favoured with a view of the book and of the note

the law shall decide upon its criminal denomination. I protest in his name against all speculations respecting *consequences* when the law commands us to look only to *INTENTIONS*. If the state be threatened with evils, let Parliament administer a *prospective* remedy; but let the prisoner hold his life *UNDER THE LAW*. Gentlemen, I ask this solemnly of the Court, whose justice I am persuaded will afford it to me; I ask it more emphatically of you, the *jury*, who are called upon by your oaths to make a true deliverance of your countryman from this charge: but lastly and chiefly I implore it of *HIM* in whose hands are all the issues of life, whose merciful eye expands itself over all the transactions of mankind,—at whose command nations rise and fall, and are regenerated. I implore it of *GOD HIMSELF*, that *HE* will fill your minds with the spirit of truth, so that you may be able to find your way through the labyrinth of matter laid before you—a labyrinth in which no man's life was ever before involved in the whole history of human justice or injustice."

He then proceeds to analyse the indictment, and to lay down the law,—contending, with great subtlety,

"That the compassing of the King's death, or, in other words, the traitorous intention to destroy his *natural existence*, is the treason, and not the overt acts, which are only laid as manifestations of the traitorous intention, or, in other words, as *EVIDENCE* competent to be left to a jury to prove it; and that no conspiracy to levy war against the King, nor any conspiracy against his *regal character* or *capacity*, is a good overt act of compassing *his death*, unless some force be exerted or in contemplation against the KING'S PERSON; and that such force, so exerted and in contemplation, is not substantively the treason of compassing, but only competent in point of law to establish it, if the jury, by their verdict of *Guilty*, draw that conclusion of fact from the evidence of the overt act."

Discussing how far the charge was substantiated, he says:—

"The unfortunate man whose innocence I am defending is arraigned before you of high treason, upon evidence not only repugnant to the statute, but such as never yet was heard of in any capital trial—evidence which, even with all the attention you have given to it, I defy any one of you at this moment to say of what it consists—evidence (I tremble for my boldness, in standing up for the life of a man, when I am conscious I am incapable of understanding from it even what acts are imputed to him)—evidence which has consumed four days in the reading, made up from the unconnected writings of men unknown to one another, upon a hundred different subjects—evidence the very listening to which has filled my mind with unremitting distress and agitation, and which, from its discordant nature, has suffered me to reap no advantage from your indulgence, but which, on the contrary, has almost set my brain on fire with the vain endeavour to analyse it. . . .

But read these books over and over again, and let us stand here a year and a day in discoursing concerning them, still the question must return to what you, and you only, can resolve—Is he guilty of that base, detestable intention to destroy the King?—not whether you suspect, nor whether it be probable—not whether he *may* be guilty—no, but that '*provably*' he is guilty. If you can say this upon the evidence, it is your duty to say so, and you may with a tranquil conscience return to your families, though by your judgment the unhappy object of it must return no more to his. Alas! gentlemen, what do I say? He has no family to return to; the affectionate partner of his life has already fallen a victim to the surprise and horror which attended the scene now transacting. But let that melancholy reflection pass—it should not, perhaps, have been introduced—it certainly ought to have no weight with you, who are to judge upon your oaths. I do not stand here to desire you to commit perjury from compassion; but, at the same time, my earnestness may be forgiven, since it proceeds from a weakness common to us all. I claim no merit with the prisoner for my zeal; it proceeds from a selfish principle inherent in the human heart. I am counsel, gentlemen, for myself. In every word I utter, I feel that I am pleading for the safety of my own life, for the lives of my children after me, for the happiness of my country, and for the universal condition of civil society throughout the world."

He then showed that the Societies impeached had only adopted the doctrines of Lord Chatham and other great reformers whose loyalty had not been doubted, and that the Duke of Richmond had gone much farther than Mr. Hardy:—

"Gentlemen, the Duke of Richmond's plan was universal suffrage and annual parliaments; and urged, too, with a boldness which, when the comparison comes to be made, will leave in the back-ground the strongest figures in the writings on the table. I do not say this sarcastically; I mean to speak with the greatest respect of his Grace, both as to the wisdom and integrity of his conduct; for, although I think, with Mr. Fox, that annual parliaments and universal suffrage would be nothing like an improvement in the Constitution, yet I confess that I find it easier to say so than to answer the arguments which the Duke of Richmond has adduced in support of his sweeping measure of reform."

Having pointed out that the present Prime Minister himself, who must be supposed to have directed these prosecutions against associates and disciples, had been a reformer like the prisoner at the bar, he says:—

"It would be the height of injustice and wickedness to torture expressions, and pervert conduct into treason and rebellion which had

recently lifted up others to the love of the Nation, to the confidence of the Sovereign, and to all the honours of the State! Why is every thing to be held up as *bonâ fide* when the example is set, and *malâ fide* when it is followed? Why have not I as good a claim to take credit for honest purpose in the poor man I am defending—against whom not a contumelious expression has been proved—as when we find the same expressions in the mouths of the Duke of Richmond and Mr. Pitt?”

In palliating the sympathy of the Societies with the French Republic, which was likely to make an unfavourable impression on the jury, he dwelt with much force upon the combination of the Continental Sovereigns to extinguish liberty in France, and thus, in his own person, avowed the sentiments which were urged as proof to support the charge of high treason:—

“Men may assert the right of every people to choose their government without seeking to destroy their own. This accounts for many expressions imputed to the unfortunate prisoners, which I have often uttered myself, and shall continue to utter every day of my life, and call upon the spies of Government to record them. I will say anywhere without fear—nay, I will say in this Court where I stand—that ‘an attempt to interfere by despotic combination and violence with any government which a people choose to give to themselves, whether it be good or evil, is an oppression and subversion of the natural and inalienable rights of man;’ and, though the Government of this country should countenance such a system, it would not only be still legal for me to express my detestation of it, as I here deliberately express it, but it would become my interest and my duty to do so. For, if combinations of despotism can accomplish such a purpose, who shall tell me what other nation may not be the prey of their ambition? Upon the very principle of denying to a people the right of governing themselves, how are we to resist the French, should they attempt by violence to fasten their government upon us? or what inducement would there be for resistance to preserve laws which are not, it seems, our own, but which are unalterably imposed upon us? The very argument strikes, as with a palsy, the arm and vigour of the nation. I hold dear the privileges I am contending for, not as privileges hostile to the Constitution, but as necessary for its preservation; and if the French were to intrude by force upon the government of our own free choice, I should leave these papers, and return to a profession *that perhaps I better understand.*”\*

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\* We may conceive to what a pitch he had worked up the feelings of the jury when he could venture upon this martial ebullition, which, in cooler moments, would have excited a titter. In reality, he had no taste for the

art of war, and never had made greater progress in it than being able, in the absence of the captain, pretty tolerably to put his company of the Royals through the manual and platoon exercise.

Having the jury now under his control, he returns with renewed force to the consideration of the tremendous consequence of the principle on which the prosecution was founded:—

“The delegates who attended the meetings could not be supposed to have met with a different intention from those who sent them; and if the answer to that is, that the constituents are involved in the guilt of their representatives, we get back to the monstrous position from which I observed you before to shrink with visible horror when I stated it—as it involves in the fate of this single trial every man who corresponded with these societies, or who, as a member of societies in any part of the kingdom, consented to the meeting which was assembled, or to the meeting which was in prospect. Upwards of forty thousand persons, upon the lowest calculation, must alike be liable to the pains and penalties of the law, and hold themselves as tenants at will under the ministers of the Crown. The campaign of Judge Jeffreys in the west was nothing to what may follow. In whatever aspect, therefore, this prosecution is regarded, new difficulties and new uncertainties and terrors surround it.”

But I must give a specimen of the manner of his commenting upon the testimony of the witnesses—which, after all, is the most important function of an advocate before a jury. Thus he handled one of the Government spies who had been examined:—

“Mr. Grove professed to speak from notes, yet I observed him frequently looking up to the ceiling whilst he was speaking—when I said to him, ‘Are you now speaking from a note? Have you got any note of what you are now saying?’ He answered, ‘Oh no; this is from recollection.’ Good God Almighty! *Recollection* mixing itself up with *notes* in a case of HIGH TREASON. He did not even take down the words; nay, to do the man justice, he did not even affect to have taken the words, but only the *substance*, as he himself expressed it. Oh, excellent evidence! The substance of words taken down by a spy, and supplied where detective by his memory! But I must not call him a spy, for it seems he took them *bonâ fide* as a delegate, and yet *bonâ fide* as an informer. What a happy combination of fidelity! faithful to serve, and faithful to betray!—correct to record for the benefit of the society, and correct to dissolve and to punish it! In the last precedent which could be cited of the production of such testimony, the case of Lord Stafford, accused of being concerned in the Popish plot—all the proceedings were ordered to be taken off the file and burnt, ‘to the intent that the same might no longer be visible to after ages,’—an order dictated, no doubt, by a pious tenderness for national honour, and meant as a charitable covering for the crimes of our fathers. But it was a sin against posterity; it was a treason against society; for, instead of being burnt,



they should have been directed to be blazoned in large letters upon the walls of our courts of justice, that, like the characters deciphered by the prophet of God to the Eastern tyrant, they might enlarge and blacken in your sight to terrify you from acts of injustice."

I must refrain from copying more than a few sentences of the peroration:—

"My firmest wish is, that we may not conjure up a spirit to destroy ourselves, nor set the example here of what in another country we deplore. Let us cherish the old and venerable laws of our forefathers. Let our judicial administration be strict and pure: and let the jury of the land preserve the life of a fellow-subject, who only asks it from them on the same terms under which they hold their own lives, and all that is dear to them and their posterity for ever. Let me repeat the wish with which I began my address to you, and which proceeds from the very bottom of my heart: May it please God, who is the author of all mercies to mankind, whose providence I am persuaded guides and superintends the transactions of the world, and whose guardian Spirit has ever hovered over this prosperous island, to direct and fortify your judgments! I am aware I have not acquitted myself to the unfortunate man who has put his trust in me in the manner I could have wished;—yet I am unable to proceed any farther—exhausted in spirit and in strength—but confident in the expectation of justice."

It is said that from his extraordinary exertions he had become quite hoarse, and that for ten minutes before he sat down, leaning for support on the table, he could only whisper to the jury; but that, so intense was the stillness—such breathless eagerness was there to catch every syllable which fell from him, his faint accents were heard in the remotest corner of the court, and produced a deeper effect than was ever witnessed from tones the most powerful and mellifluous.

As soon as he had concluded, an irresistible acclamation pervaded the court, and was repeated to an immense distance around. The streets seemed to be filled with the whole population of London, and it was for some time impossible for the Judges to get to their carriages. Erskine, thereupon making a noble and triumphant use of his popularity, went out and addressed the multitude, desiring them to confide in the justice of the country—reminding them that the only security of Englishmen was under the inestimable laws of England, and that any attempt to overawe or bias them would not only be an affront to public justice, but would endanger the lives of the accused. He then besought them to retire,—and in a

few minutes there was no one to be seen within half a mile of the court except a casual passer-by, unconscious of what had happened, or a drowsy watchman on his round, announcing, according to ancient custom, the hour of the night and the state of the weather.

The result of this memorable trial is well known. After important evidence as to the objects of the Societies and the loyal and peaceable character of the prisoner,—an argumentative and able address from Sir Vicary Gibbs,—a very lengthy reply from Lord Redesdale, then Solicitor-General,—and an unexceptionable summing up from Chief Justice Eyre, the jury found a verdict of NOT GUILTY,—which gave rise to rapturous rejoicings among the reformers, and was received with satisfaction by the judicious of all parties.

I am wholly at a loss to account for the infatuated obstinacy which was now exhibited. The almost invariable practice has been, that after an acquittal of the first man tried of several jointly charged with high treason, the prosecution has been abandoned as to the others; and one would have thought that here the Government would eagerly have withdrawn from an attempt which had been so unfortunate, and which was so universally condemned. Yet, to the amazement of the public, it was announced that another prisoner was to be tried on the same charge and the same evidence, and that this prisoner was JOHN HORNE TOOKE, a man popular by his agreeable manners, admired for his literary acquirements, who had ever conducted himself with caution and discretion; known to be aristocratic in his inclinations, although he was a demagogue;—and for assailing and annoying antagonists in a forensic proceeding having proved himself to have unrivalled powers,<sup>a</sup> which were sure to be called in aid to follow up the destructive onslaught of Erskine, now flushed with victory.

Yes! John Horne Tooke, with a constitution broken by age and disease, but a mind as alert and youthful as when he wrote against Junius, and spoke against Thurlow, was next called upon to hold up his hand at the bar of the Old Bailey, and, having heard the jargon of the indictment read, was asked

<sup>a</sup> *E. g.* He had been his own counsel in the action brought against him by Mr. Fox for the expenses of the Westminster election petition, and thus began his address to the jury: "Gentlemen, there are here three

parties to be considered—*you, Mr. Fox, and myself.* As for the *Judge* and the *crier*, they are sent here to preserve order, and they are both well paid for their trouble."

how he would be tried? Although perfectly confident of an acquittal, he gave a foretaste of what might be expected during the trial, by putting on the aspect of a man weighed down by his oppressors, by looking round the court some seconds with an air of significant meaning, which few assumed better, and by answering, while he emphatically shook his head, "I would be tried by God and my country! But"—— Here he paused, having intimated with sufficient distinctness that he feared much he should not have this advantage.

An application having been made that, on account of his infirmities, he might be permitted to sit by his counsel, he was told that "*this indulgence* should be shown him." Instead of humbly thanking the Judge in whose hands he was, and who was by and by to direct the jury on the question of his life or death, he observed, in a very quiet familiar tone, "I cannot help saying, my Lord, that if I were a Judge, that word '*indulgence*' should never issue from my lips. My Lord, you have no indulgence to show: you are bound to be just; and to be just, is to do that which is ordered."

Once seated at the table with the counsel, he was the most facetious and light-hearted of mortals, and seemed to have as much enjoyment in the proceeding as a young advocate who has unexpectedly got a brief with a good fee in a winning cause, which has excited great interest, and by which he expects to make his fortune. "Cool and prompt, ready at repartee, and fond of notoriety, he trod the boards of the Old Bailey like some amateur actor, pleased with his part, and resolved to make the most of it, even though the catastrophe should terminate in his death. After the acquittal of Hardy the reverend agitator would have deprecated his not being brought to trial as a personal misfortune. It is impossible to read this grave state prosecution without frequently indulging in an involuntary smile. From the constant merriment which rewarded his sallies, it might be guessed that a madder wag never stood at the bar; and yet he rarely laughed himself, but glanced around, from his keen and arch eyes, a satirical look of triumph."<sup>b</sup> To the credit of Erskine be it stated, that he was not at all annoyed by the sallies of his client, although they were sometimes unseasonable, nor jealous of the *éclat* which they brought him; but, on the contrary, encouraged him to interpose, and rejoiced in the success of his hits. While the evidence for the prosecution was going on, he seemed con-

<sup>b</sup> Townsend's Twelve Eminent Judges, fi. 24.

tent with the office of being second to one so perfect in the art of forensic duelling.

I may mention one or two of the quips of Horne Tooke, which Erskine applauded.

Passages being read from pamphlets published by the Societies, abusing the King and the Lords, he offered to prove that much abuse of himself had been printed on *earthenware vessels*.—A witness having said that a treasonable song had been sung at a public meeting, he proposed that it should be sung in court, so that the jury might ascertain whether there was any thing treasonable, resembling *Ça ira* or the Marseillaise Hymn in the tune.—He not unfrequently succeeded in arguing questions of evidence; and if found out to be clearly wrong, he took a pinch of snuff, and quietly apologised by saying that “he was only a student of forty years’ standing.” On one occasion, when he objected to the admissibility of evidence of a particular fact, on the ground that he was not connected with it, Eyre reminded him, that if there were two or three links to make a chain, they must go to one first, and then to another, and see whether the chain was made. *Horne Tooke*: “I beg your pardon, my Lord, but is not a chain composed of links? and may I not disjoin each link? and do I not thereby destroy the chain?” *Eyre, C. J.*: “I rather think not, till the links are put together and form the chain.” *Horne Tooke*: “Nay, my Lord, with great submission to your Lordship, I rather think that I may, because it is my business to prevent the forming of that chain.”—To show him to be a republican, evidence was given that a society, of which he was a member, had approved of certain proceedings in the National Assembly. “Egad,” said he, “it is lucky we did not say there were some good things in the Koran, or we should have been charged to be Mahometans.”—Having put questions to show that at public meetings they had often disapproved of his sentiments and his conduct, he gave a knowing nod to the jury, and said, “My object, gentlemen, was to show that, after I had deposed our Lord the King, I was likely to have very troublesome subjects, for I was constantly received with hisses.”—By putting the following question, he excited a roar of laughter against the solemn and empty Beaufoy, who pretended hardly to know him, and denied all recollection of a date to which he was interrogated: “Now, witness, upon your oath, was it not the very day that you complained so bitterly to me you could not sleep because, notwithstanding all your

services to Mr. Pitt, and all the money you had spent in his cause, he had refused to return your bow?" Few were aware at the time that this was pure invention, to expose a tuft-hunter.—The Attorney-General, in repelling some insinuations thrown out against him for the manner in which he had instituted these prosecutions, said "he could endure any thing but an attack on his *good name*; it was the *little patrimony* he had to leave to his children, and, with God's help, he would leave it unimpaired." He then burst into tears, which, from his lachrymose habit, surprised no one; but, to the wonder of all, the Solicitor-General, not known to be of the melting mood, became equally affected, and sobbed in concert with his friend. Tooke, afraid that this sympathy might extend to the jury, exclaimed, in a stage whisper, "Do you know what Sir John Mitford is crying about? He is thinking of the destitute condition of Sir John Scott's children, and the *little patrimony* they are likely to divide among them."

When the time arrived for the prisoner's counsel addressing the jury, Erskine was again the observed of all observers, and almost surpassed his performance in defending Hardy. On that occasion, notwithstanding his assumed boldness, he evidently entertained great apprehensions as to the result. He could now even venture to be jocular. In commenting upon the authorities cited by the Attorney-General, he said:

"To give the case of Lord Lovat any bearing upon the present, you must first prove that our design was to arm, and I shall then admit the argument and the conclusion. But has such proof been given on the present trial? It has not been attempted; the abortive evidence of arms has been abandoned. Even the solitary pike that formerly glared rebellion from the corner of the court no longer makes its appearance, and the knives have returned to their ancient office of carving. Happy was it indeed for me that they were ever produced; for so perfectly common were they throughout all England, and so notoriously in use for the most ordinary purposes, that public justice and benevolence, shocked at the perversion of truth in the evidence concerning them, kept pouring them in upon me from all quarters. The box before me is half full of them; and if all other trades fail me, I might now set up a cutler's shop."

Thus he pointed out the improbability of the charge against the aged philologist:—

"Yet this gentleman, greatly advanced in years and broken in health, who was shut up then and long before within the compass of his house and garden at Wimbledon, where he used to wish an act of parliament might confine him for life, who was painfully devoting the greatest por-

tion of his time to the advancement of learning, who was absorbed in researches which will hereafter astound the world—who was at that very moment engaged in a work such as the labour of man hardly ever undertook, nor perhaps his ingenuity ever accomplished—who never saw the Constitutional Society but in the courtesy of a few short moments after dining with some of the most respectable members, and who positively objected to the very measure which is the whole foundation of this prosecution,—is yet gravely considered to be the master-spirit which was continually directing all the movements of a conspiracy as extensive as the island—the planner of a revolution in the government, and the active head of an armed rebellion. Gentlemen, is this a proposition to be submitted to the judgment of honest and enlightened men upon a trial of life and death? Why there is nothing in the *Arabian Nights* or in the Tales of the Fairies which is not dull matter of fact compared with it. . . . Filled with indignation that an innocent man should be consigned to a prison for treading in the very steps which had conducted the Premier to his present situation, Mr. Horne Tooke did write ‘that if ever that man should be brought to trial for his desertion of the cause of parliamentary reform, he hoped the country would not consent to send him to Botany Bay;’ but whatever you may think of this sentiment, Mr. Tooke is not indicted for compassing and imagining the death of William Pitt.”

In combating the unfair course of inferring that every opinion in a book is adopted by him who praises the author, he pointed out that a work of Mr. Burke contained a dangerous principle destructive of British liberty, and thus proceeded:—

“What then? Ought I to seek its suppression? Ought I to pronounce him to be a criminal who promotes its circulation? On the contrary, I shall take care to put it into the hands of those whose principles are left to my formation. I shall take care that they have the advantage of doing, in the regular progression of youthful study, what I have done even in the short intervals of laborious life;—that they shall transcribe with their own hands, from all the works of this most extraordinary person, the soundest truths of religion—the justest principles of morals, inculcated and rendered delightful by the most sublime eloquence—the highest reach of philosophy brought down to the level of common minds—the most enlightened observations on history, and the most copious collection of useful maxims from the experience of life. All this they shall do, and separate *for themselves* the good from the evil—taking the one as far more than a counterpoise for the other.”<sup>c</sup>

The case against Horne Tooke rested chiefly upon the fol-

<sup>c</sup> The Right Hon. T. Erskine, in reference to this passage, writes to me,—“This resolution he put in practice by giving us, as

boys, passages from Burke’s works to transcribe and learn by heart.”

lowing letter, found in his possession, addressed to him by Joyce, one of the alleged conspirators:—

“Dear Citizen,—This morning at six o’clock Citizen Hardy was taken away by order from the Secretary of State’s office: they seized every thing they could lay hands on. *Query—Is it possible to get ready by Thursday?*”

The conclusive proof of rebellion was thus disposed of by Erskine:—

“This letter, being intercepted, was packed into the green box, and reserved to establish the plot. It is another lesson of caution against vague suspicions. Mr. Tooke having undertaken to collect from the Court Calendar a list of the titles, offices, and pensions bestowed by Mr. Pitt on his relations, friends, and dependents, and being too correct to come out with a work of that magnitude and extent upon a short notice, had fixed no time for it—which induced Mr. Joyce, who was anxious for its publication, to ask if he could be ready with it by Thursday; using the French designation of ‘*citizen*’ for the purpose of turning it into ridicule!”

So confident had he become, that he even ventured to treat with some severity a jurymen who appeared to disapprove of his argument:—

“To expose further the extreme absurdity of this accusation, if it be possible further to expose it, let me imagine that we are again at peace with France, while the other nations who are now our allies should continue to prosecute the war,—would it *then* be criminal to congratulate France upon her successes against them? When that time arrives, might I not honestly wish the triumph of the French armies? And might I not lawfully express that wish? I know certainly that I might—and I know also that I would! *I observe that this sentiment seems a bold one*; but who is prepared to tell me that I shall not? I WILL assert the freedom of an Englishman; I WILL maintain the dignity of man. I WILL vindicate and glory in the principles which raised this country to her pre-eminence among the nations of the earth; and as she shone the bright star of the morning to shed the light of liberty upon nations which now enjoy it, so may she continue in her radiant sphere to revive the ancient privileges of the world, which have been lost, and still to bring them forward to tongues and people who have never yet known them, in the mysterious progression of things.”

Instead of an impassioned peroration, he now merely said, as if he considered the battle won,—

“I cannot conclude without observing that the conduct of this abused and unfortunate gentleman throughout the whole of this trial has certainly entitled him to admiration and respect. I had undoubtedly pre-

pared myself to conduct his cause in a manner totally different from that which I have pursued. It was my purpose to have selected those parts of the evidence only by which he was affected, and to have separated him from the rest. By such a course I could have steered his vessel safely through all perils, and brought her without damage into a harbour of safety, while the other unfortunate prisoners were left to ride out this awful tempest. But he would not suffer his defence to be put upon the footing which discretion would have suggested. Though not implicated in the supposed conspiracy, he has charged me to waste and destroy my strength to prove that no such guilt can be brought home to others. I rejoice in having been made the humble instrument of so much good—my heart was never so much in any cause.”

When the evidence came to be adduced, he strenuously assisted Mr. Tooke in examining the witnesses, and particularly in trying to refresh the memory of Mr. Pitt respecting a meeting of delegates, at which the young patriot had been present previous to one of his motions for parliamentary reform; but could extract no answer from him, except that he *did not recollect*. The Minister evidently quailed under the discipline of his former associate, and of the man whom in the House of Commons he had treated with such contempt. Indeed, this was the most humiliating passage of his whole life, and the recollection of it must have been painful to him amidst all his subsequent triumphs over political foes.<sup>d</sup>

Although Hardy's jury had deliberated several hours, Horne Tooke was acquitted as soon as the Judge had concluded the summing up—when he gracefully returned thanks to the Bench and the jury for the fair trial which had ended so auspiciously, and above all for the noble exertions of his counsel, who had done such effectual service to public liberty.

Still the Government was not satisfied, and a third prisoner, Thelwall, was put upon his trial. They would have had a better chance of a conviction if they had begun with him, as he had taken a much more active part in the societies than either of the other two. The effort now was, to shorten the case for the prosecution, and it ended early on the third day. Erskine expressed some embarrassment at being so unexpectedly called upon to enter on the defence, but he executed the task with his never-failing ability and energy.<sup>e</sup> I must content myself

<sup>d</sup> It is curious that, after the examination of Sheridan, Pitt voluntarily declared that he *did* recollect a meeting at the Duke of Richmond's, at which were present delegates from different county meetings, and from several cities and towns. At this moment

he must have wished that he had been true to the cause of Parliamentary Reform, instead of grasping supreme power in the state.

<sup>e</sup> It is said that Thelwall was a very troublesome client, and frequently interfered in-



with giving one passage from it, in which he tried to take off the effect of most intemperate words against the Government imputed to the prisoner by a spy. After attacking the credibility of the witness, he thus proceeded :—

“ Even if the very phrase had not been exaggerated, if the particular sentence had not been coloured or distorted, what allowance ought there not to be made for infirmity of temper, and the faults of the tongue, in a period of intense excitement ! Let me ask, who would be safe, if every loose word, if every vague expression, uttered in the moment of inadvertence or irritation, were to be admitted as sufficient evidence of a criminal purpose of the most atrocious nature ? In the judgment of God we should, indeed, be safe, because He knows the heart—He knows the infirmities with which He hath clothed us, and makes allowance for those errors which arise from the imperfect state of our nature. From that perfect acquaintance which He possesses with our frame, He is qualified to regard in their proper point of view the involuntary errors of the misguided mind, and the intemperate effusions of the honest heart. With respect to these, in the words of a beautiful moral writer, ‘ the accusing angel, who flies up to Heaven’s chancery, blushes as he gives them in, and the recording angel, as he writes them down, drops a tear upon the words and blots them out for ever.’ Who is there that in the moment of levity or of passion has not adopted the language of profaneness, and even trifled with the name of the God whom he adores ? Who has not, in an unguarded hour, from a strong sense of abuse, or a quick resentment of public misconduct, inveighed against the Government to which he is most firmly attached ? Who has not, under the impulse of peevishness and misapprehension, made use of harsh and unkind expressions, even with respect to his best and dearest relations—expressions which, if they were supposed to proceed from the heart, would destroy all the affection and confidence of private life ? If there is such a man present so uniformly correct in expression, so guarded from mistake, so superior to passion, let him stand forth, let him claim all the praise due to a character so superior to the common state of humanity. For myself, I will only say, *I am not the man.*”

The Jury found a verdict of NOT GUILTY.

At last the Attorney-General said he should proceed no farther, and all the other prisoners were acquitted without any evidence being offered against them.

Even Adolphus, the zealous advocate of all the measures of Mr. Pitt’s Administration which can be praised or excused, is obliged to say,—“ Considering calmly these prosecutions, they appear in every point of view to have been unfortunate,

discreetly in the defence. At one time he was so much dissatisfied, that he wrote on a piece of paper, which he threw to Erskine,

“ I’ll be hanged if I don’t plead my own cause ;” upon which his counsel returned for answer, “ You’ll be hanged if you do.”

not to say unwise. . . . It was desirable to frustrate the schemes of desperate innovators; but the British public, who had ever been accustomed to meet, to associate, to proclaim their political opinions and predilections, to devise means and to recommend measures for removal of their grievances, and improvement of their social condition, viewed with anxiety and alarm those measures which tended to plunge individuals into the dreadful gulf of high treason, when they had unintentionally, perhaps, exceeded the bounds which an exact knowledge of the laws and a timid prudence would have prescribed.”<sup>a</sup>

There were strong manifestations of public gratitude for the services which Erskine had rendered in saving the country from the peril with which it had been threatened. On the last night of the trials his horses were taken from his chariot,—amidst bonfires and blazing flambeaux, he was drawn home by the huzzaing populace to his house in Serjeants’ Inn,—and they obeyed his injunction, when, addressing them from a window, with Gibbs by his side, he said, “Injured innocence still obtains protection from a British jury, and I am sure, in the honest effusions of your hearts, you will retire in peace and bless God.”<sup>s</sup> The freedom of many corporations was voted to him, and his portraits and busts were sold in thousands all over Great Britain. What was more gratifying, his speeches for the prisoners were read and applauded by all men of taste, his political consequence was much enhanced with his party, and he had full revenge for the sarcasms of Pitt. He now occupied a position as an advocate which no man before had reached, and which no man hereafter is ever likely to reach at the English Bar.

It is delightful to find the same individual a few weeks after thus writing to a friend:—“I am now very busy flying my boy’s kite, shooting with the bow and arrow, and talking to an old Scotch gardener ten hours a-day, about the same things, which, taken altogether, are not of the value or importance of a Birmingham halfpenny, and am scarcely up to the exertion of reading the daily papers. How much happier it would be for England and the world if the King’s ministers were employed in a course so much more innocent than theirs, and so *perfectly suitable to their capacities!*”<sup>b</sup>

<sup>a</sup> Vol. vi. p. 71.

<sup>s</sup> When he used to boast of this ovation, some of his friends sought to mortify him by asserting (I know not with what truth)

that the patriots who took his horses from his carriage, *forgot to return them.*

<sup>b</sup> Letter to Dr. Parr.

## CHAPTER CLXXXI.

CONTINUATION OF THE LIFE OF LORD ERSKINE TILL THE TRIAL OF  
HADFIELD FOR SHOOTING AT GEORGE III.

WHEN the victorious advocate again spoke in the House of Commons, his reception there was much more flattering than any he had previously experienced. The occasion was a motion for a repeal of the "Habeas Corpus Suspension Act," when he went through the history of the late State Trials, contending that they proved "a conspiracy to alarm the country, and to deceive Parliament." Having stated the opinion of the Judge against the objection that the prisoners were not privy to the plans of the obnoxious societies, he proceeded :—

Jan. 5,  
1795.

"The Judge said true : we forbore to urge it, because we knew that it was not tenable ground, though we were firmly convinced that the defence was invulnerable in point of law, not only by the statute, but even by all the authorities; yet we did not expect that the jury would prefer our statement as advocates to the judgment of the Court, whether well or ill founded ; but we looked to the great sheet-anchor of the cause—the gross falsehood and absurdity of the supposed conspiracy. On that we relied, and on that we prevailed." Thus he concluded :—"If the threat of invasion is carried into effect, who is to defend the country ? Who, but this insulted people, whom you calumniate ? The people only can do it, and they will do it only as they feel an interest worth the exertion. Let the Chancellor of the Exchequer attend to the maxim happily expressed by the poet, and no less happily applied by his great father to the case of alienated America :—

'Be to their virtues very kind,  
Be to their faults a little blind;  
Let all their ways be unconfin'd,  
And clap a padlock on their mind.'"<sup>i</sup>

In a very violent speech which he made against the Seditious Meetings Bill, he resorted to an oath as in Lord George Gordon's case, but not with the same success :—

"If the Government resolve to rob the people of their rights, the people will be justified in resisting such glaring oppression. I will say again and again, that it is the right of the people to resist a Government which exercises tyranny. It is certainly bold to say that the people have a right to resist, and that they ought to rise; but there are some occasions which render the boldest language warrantable. 'If the King's servants,' said Lord Chatham, 'will not permit a constitutional question to be decided according to the forms and on the principles of the Constitution, it must then be decided in some other manner; and rather than it should be given up—rather than that the nation should surrender their birthright to a despotic Minister, I hope, my Lords, old as I am, I shall see the question brought to issue, and fairly tried between the people and the Government!' Sanctioned by the sentiments of that venerable and illustrious man, I maintain that the people of England should defend their rights, if necessary, by the last extremity to which freemen can resort. For my own part, I shall never cease to struggle in support of liberty. In no situation will I desert the cause. I was born a freeman, and, BY GOD, I will never die a slave."<sup>k</sup>

One of the best speeches he ever delivered in Parliament was against the bill for making "a conspiracy to levy war" HIGH TREASON,—without any overt act which could be considered a levying of war. He here gives a most admirable exposition of the statute of Edward III., showing the wisdom of the distinction between "a conspiracy to levy war" and "a conspiracy against the life of the Sovereign;"—illustrating from English history the evils produced by departing from that statute and tyrannically creating the new treasons which had all been repealed in better times. I would earnestly implore statesmen to read and to ponder his arguments before proposing to repress crimes against the state by severer penal laws. But happily, in the present generation, such admonitions are little wanted, and I am delighted to think that I can freely stand up for constitutional maxims without incurring any suspicion of reflecting on political opponents: whatever questions may still divide existing parties, I believe that, from the improved spirit of the age, we are all equally united in the conviction that the governors should respect the Constitution if they wish it to be respected by the governed. Of the passionate declamation which Erskine mixed up with his reasoning, the reader may form an opinion from the following specimen:—

"I have no right to ask a Royal audience, but I declare that I feel a strong inclination to rush into the closet of my Sovereign, forgetful of

the usual forms of decorum, and to implore him upon my knees to withhold his assent from a bill which goes to destroy his throne in the hearts of his subjects, and to invest him with the insignia of a tyrant. I cannot believe that his Majesty, convinced as he must necessarily be of the loyalty and attachment of his people, will ever give his approbation to a law which, under the pretext of providing for his safety, contains a gross and unfounded libel on the character of his subjects. When it pleased God to remove from the Sovereign the hand of affliction, what demonstrations of loyalty and affection appeared in the metropolis, as his Majesty passed to St. Paul's to give thanks to Heaven for his deliverance ! The nation appeared one great family rejoicing at the recovery of their common father. And notwithstanding all this tumult of congratulatory joy, notwithstanding that banquet of affection on which it is the fortune of the present Monarch daily to regale, his Ministers would inspire him with jealousy and distrust. An alarm is sounded throughout the kingdom, and spies and informers echo back the cry. Whence the framers of the bill borrowed the enactment against 'expressing, publishing, uttering, or declaring any words or sentences to incite or stir up the people,' I cannot conceive. After this, a sigh or a groan may be construed into treason. I have in vain searched for it in the history of former tyrannies, and I can only suppose it to have been suggested by the description of the poet :—

‘In the vaulted roof  
The tyrant sat, and through a secret channel  
Collected every sound ; heard each complaint  
Of martyr'd virtue ; kept a register  
Of sighs and groans, by cruelty extorted ;  
Noted the honest language of the heart ;  
Then on the victims wreak'd his murd'rous rage,  
For yielding to the feelings of their nature.’

“The annals of Britain do not furnish an instance in which the statute of Edward III., the *statutum benedictum*, as it is emphatically called, has not accomplished all that law can accomplish to protect the King and his Government ; but the present bill wantonly creates new and undefined treasons, disorganises the system of our jurisprudence, and, by sanctioning grievous and vexatious measures, will excite disaffection and engender discord.”<sup>m</sup>

While this bill was pending, a controversy arose in which, I am sorry to say, Erskine and the Whig Opposition appeared to little advantage ;—nay, to speak the whole truth, most inconsistently, grossly, and flagrantly violated the principles of free discussion which they had been so loudly contending for. Mr. John Reeves, president of the “Society against Republicans and Levellers,”—a gentleman of considerable literary distinction,—had published a somewhat silly but a very harm-

less book, entitled "Thoughts on the English Government," in which was to be found this passage: "The government of England is a monarchy; the monarchy is the ancient stock from which have sprung those goodly branches of the legislature,—the Lords and Commons, that at the same time give ornament to the tree, and afford shelter to those who seek protection under it. But these are still branches, and derive their origin and their nutriment from their common parent; they may be lopped off, and the tree is a tree still;—shorn indeed of its honours, but not, like them, cast into the fire. The kingly government may go on in all its functions, without Lords or Commons; it has heretofore done so for years together, and in our times it does so during every recess of Parliament; but without the King his Parliament is no more." I blush while I relate that the defender of Stockdale, of Hardy, and of Horne Tooke,—while still meditating his purpose of rushing into the King's presence, to implore, upon his bended knees, that the royal assent should be withheld from a bill to fetter free inquiry into political subjects,—zealously and effectually supported a resolution that this book was "a breach of the privileges of the House of Commons, and that the Attorney-General should be directed to prosecute the author for a libel;" saying, "What a glorious representative of the people of England would that House appear to be, if they passed by the pamphlet which had been read to them that night, in which they were represented as a mere council for the Crown, and that in this consisted their greatest utility,—that all the vigour they were supposed to have, as an emanation from the people, was a mere chimera! If they voted that this was no libel, the public would see that they did so because it was in favour of the Crown against the rights of the people; and he was quite sure, that if the Attorney-General called for the verdict of a jury upon it, they would not require that time to deliberate upon it which members opposite seem to desire." Mr. Pitt and his colleagues very sensibly and laudably tried to keep the House out of the scrape into which they were rushing, and succeeded so far as to have the matter referred to a Committee of Privileges: but, after two reports from the Committee, the motion for a prosecution, being supported by Mr. Fox, Mr. Sheridan, and Mr. Grey, was carried, without a division. Accordingly, May 20, 1796. a criminal information was filed by the Attorney-General, and brought to trial before Lord Kenyon—when the jury, taking a much juster view of the subject than had been antici-

pated by the champion of the liberty of the press, after an hour's deliberation returned this verdict:—"My Lord, we are of opinion that the pamphlet, which has been proved to have been written by John Reeves, Esq., is a very improper publication,—but we think his motives not such as are alleged in the information, and therefore we find him NOT GUILTY."<sup>a</sup> So end all such House of Commons' prosecutions!!! I hope that, as a punishment for this hallucination, Erskine was present when Plumer, who was counsel for the defence, spoke with much applause, and that he heard the shouts of rejoicing with which the verdict was received."

Whether ashamed to show himself in the House of Commons or not, the fact is, that the next time Erskine rose to take a part in debate,—notwithstanding all his experience and all his success,—he "broke down" soon after he began to address the House. The occasion was rather a formidable one. After the rupture of the negotiation for peace with the French Republic, Pitt, in one of the most splendid orations he ever delivered, took a comprehensive and masterly view of our foreign affairs, and moved an address to the King recommending a vigorous prosecution of the war. The defeated prosecutor for libel immediately followed, with the intention of answering him, and moving an amendment; but when he was observing that "France had formerly offered terms, the obtaining of which now would make the right honourable gentleman be worshipped as a God,"—he became confused, and after a pause sat down. Fox instantly rushed in to the rescue,—thus beginning: "Sorry indeed am I, on account of my honourable and learned friend, whose indisposition has suddenly compelled him to resume his seat; sorry for the sake of the House, whose information, from the train of argument he had adopted, has been thus unpleasantly interrupted; and sorry for the cause which would have had such an advocate—sorry for the sake of England, which Ministers, by their imprudent councils and infatuated policy, seem determined to push to the last verge of ruin,—that I am thus so unexpectedly called upon to address the House. I feel it, however, incumbent on me to step forward, knowing that my opinion on the subject entirely coincides with that of my honourable and learned friend—but lamenting that the arguments on this momentous question must considerably suffer from the want of that ability with which he would have enforced them."

<sup>a</sup> 32<sup>d</sup> Parl. Hist. 610, 620, 634, 680.

<sup>b</sup> Quevedo, the Spanish poet, says that the

punishment of fiddlers in hell will be to stand by and listen while other fiddlers play.

He then went on so as to make Erskine's failure soon forgotten, and once more to divide the opinion of impartial judges whether the palm of oratory should be awarded to him or to his adversary.<sup>p</sup>

For several years afterwards, Erskine very rarely spoke, or even attended the House. The policy which he condemned was not only triumphant in Parliament, but was approved by the great bulk of the nation; and he said that he saved himself for more auspicious times. He joined Fox and the other principal Whig leaders in their ill-fated secession.

In this interval he published a pamphlet, entitled "A View of the Causes and Consequences of the present War with France," which was so popular, that it was said to have run through thirty-seven editions. However, I cannot say that it adds much to his permanent fame. It contains some forcible passages, but it deals in common-places, and the style is careless. Having received some gentle hints on this subject from his friend Dr. Parr, he replied: "I cannot say how much I thank you for remarking the negligence with which it cannot but be filled. I wonder it is not nonsense from beginning to end, for I wrote it amidst constant interruption, great part of it in open court during the trial of causes. Fifteen thousand copies have been sold in England, besides editions printed at Dublin and Edinburgh, where the sale has been unusual." The most amusing part of it is the history of the Prime Minister as connected with parliamentary reform, which thus begins: "Towards the close of the American war, Mr. Pitt (a boy almost) saw the corrupt condition of Parliament, from the defect of the representation of the people, with the eyes of a mature statesman: the eagle eyes of his father had seen it before him, and the thunder of his eloquence had made it tremble. Lord Chatham had detected and exposed the rank corruption of the House of Commons, as the sole cause of that fatal quarrel, and left it as a legacy to his son to avenge and to correct them. The youthful exertions of Mr. Pitt were worthy of the delegation. From my acquaintance with him, both before and after his first entrance into public life, I have no doubt of his perfect sincerity in the cause he then undertook; and the maturity of his judgment, even at that time, with which I was well acquainted, secures his conduct from the rashness of unthinking youth." He then traces him to his fall from virtue, and the degradation he reached when he be-



came the accuser of his old friends. This made Pitt very indignant, and he several times alluded to the pamphlet with bitter scorn.

Erskine's next appearance in the House was in seconding Mr. Grey's annual motion for a Reform in Parlia-  
ment. He now, in a very long speech, reiterated all May 26,  
1797. his former arguments, and thus again showed his enmity to the Premier: "The right honourable gentleman, not contented with apostatising from the principles which he once professed, has resisted them in a spirit and language of the loftiest pride and arrogance. In his humiliation and disgrace unfortunately this once mighty nation has also been humbled and disgraced. The cause of reform was to be, at all events, put down, and all who maintained it were to be stigmatised, persecuted, and oppressed. Here is the clue to every measure of Government, from the hour of the right honourable gentleman's apostasy to the present. But the insolence with which the hopeful changes of the rising world were denounced within these walls is an awful lesson to mankind. It has taught that there is an arm fighting against the oppressors of freedom, stronger than any arm of flesh, and that the great progressions of the world, in spite of the confederacies of power and the conspiracies of corruption, move on with a steady pace, and arrive in the end at a happy and glorious consummation." Pitt followed, but on this occasion his sarcasms were dulled by the sense of his own inconsistency, and he made but a feeble opposition to the motion,—objecting to the argument of imprescriptible right by which it had been supported, and relying upon the inflamed state of the public mind, which rendered any constitutional change too perilous.<sup>q</sup>

Reprobating the unfortunate rejection of the overtures of peace by Buonaparte when he became First Consul, Feb. 3,  
1799. Erskine made an excellent speech, and called forth a reply from Pitt, which, although in a bad cause, is one of the finest efforts of his genius.<sup>r</sup> There was no other great battle between them before the time when Pitt, having seen the ruinous effects of his policy, for a time withdrew from office, that others might negotiate with a victorious General, to whom he had prescribed, as a condition of forgiveness, the restoration of the Bourbons. In the meanwhile Erskine spoke several times on miscellaneous subjects—in favour of the Bill for making adultery an indictable offence,<sup>s</sup> and the

<sup>q</sup> 33 Parl. Hist. 653.<sup>r</sup> 34 Parl. Hist. 1285.<sup>s</sup> 35 Parl. Hist. 309.

Bill for checking the institution of monastic societies in this country; and against the Bill for preventing ordained clergymen from sitting in the House of Commons." On all these subjects he spoke sensibly, without saying any thing very brilliant. .

We must now look back to what was passing in the Courts of Law, where his ascendancy remained unimpaired. The Government having very properly brought to trial, for high treason, William Stone, a merchant of London, against whom there was strong evidence that he had "adhered to the King's enemies," by inviting an invasion from France, Erskine was his counsel, and conducted the defence with infinite tact and dexterity. There was here no ground to complain of any perversion of the law of treason, or of any attack on public liberty. In a very moderate tone, therefore, he confined himself to an examination of the evidence, contending that it was all consistent with the prisoner's innocence, and observing, that "it was not enough for the Crown to raise so thick a cloud that the jury could not be sure which way to walk, but that a clear light must be shed upon the path leading to conviction, before they could venture to tread it." After long deliberation, there was a verdict of *NOT GUILTY*.\*

His speech in defence of the Bishop of Bangor, delivered July 26, at Shrewsbury, was corrected by him, and published 1796. under his sanction; but the occasion did not offer an opportunity for a display of his higher powers as an advocate. The Right Reverend Prelate, along with a body of his clergy, having somewhat irregularly and violently broken into the office of the Registrar for the diocese, and ejected from it a Mr. Grindley, who pretended to be the lawful Registrar, this gentleman indicted them all for a riot and assault. The prosecutor was a very intemperate and wrong-headed person, but the law hardly justified the proceeding of the defendants, and their counsel was evidently under very considerable alarm. I must content myself with introducing the piece of acting to which he thought he was justified in resorting at the conclusion of his address. Although he knew that he could not alter the facts by calling witnesses, and he had resolved that none should be called, he observed,—

"I am instructed, gentlemen, and, indeed, pressed, by the anxiety of the Bishop's friends, to call many witnesses to show that he was by no

\* 35 Parl. Hist. 361.

u Ib. 1335, 1397.

\* 25 St. Tr. 1153—1438.

means disturbed with passion, as has been represented; and that, so far from it, he even repressed those whose zeal for order, and whose affection for his person, prompted them to interfere, saying to them, 'The law will interpose in due season.' I have witnesses, to a great number, whom I am pressed to call before you, who would contradict Mr. Grindley in the most material parts of his testimony: but then I feel the advantage he would derive from this unnecessary course; he would have an opportunity from it to deprive the Right Reverend Prelate of the testimony and protection of your approbation. He would say, no doubt, 'Oh! I made out the case which vindicated my prosecution, though it was afterwards overturned by the testimony of persons in the Bishop's suite, and implicitly devoted to his service: I laid facts before a jury from which a conviction must have followed, and I am not answerable for the false glosses by which *his witnesses have perverted them.*' This would be the language of the prosecutor; and I am therefore extremely anxious that your verdict should proceed *upon the facts as they now stand before the Court*; and that you should repel with indignation a charge which is defeated by the very evidence that has been given to support it. I cannot, besides, endure the humiliation of fighting with a shadow, and the imprudence of giving importance to what I hold to be *nothing*, by putting *anything* in the scale against it,—a conduct which would amount to a confession that *something* had been proved which demanded an answer. How far those from whom my instructions come may think me warranted in pursuing this course, I do not know; but the decision of that question will not rest with either of us, *if your good sense and consciences should, as I am persuaded they will, give an immediate and seasonable sanction to this conclusion of the trial.*"

He was in hopes that on this invitation the jury would at once have risen, and, without turning round to deliberate, have said it was unnecessary to proceed farther, and pronounced a verdict of NOT GUILTY;—but they all kept their seats, and maintained a deep silence. Thereupon, considerably disconcerted, he pretended to consult a few minutes with Mr. Plumer, Mr. Leicester, and Mr. Milles, who were counsel along with him for the defendants, and with the attorney who instructed them,—and then, with an assumed air of satisfaction, said, "he was happy to inform the Court that his advice was followed, and he should give no evidence."

Mr. Justice Heath summed up for a conviction,<sup>†</sup> and said to the jury, "Considering that all individuals are to be tried by the law of the land, notwithstanding their high station and the character they may heretofore have maintained, if you believe the prosecutor's witnesses, and think that a case

<sup>†</sup> This Judge was supposed generally to say, "I am always on my guard against these rather to lean against Erskine: he used to 300-guinea gentry."

has been made out against the defendants, it will be your duty to find them guilty; but if you have any *reasonable doubt* whether they are guilty or not, you will acquit them." The jury,—from a laudable reluctance to send an aged prelate, venerated for his piety and good works, and a number of respectable clergymen of the Church of England who had been actuated by a desire of supporting their Diocesan, to stand on the floor of the King's Bench as malefactors, there to receive sentence of fine and imprisonment,—had sufficient doubts to induce them to pronounce a verdict of acquittal; and Erskine,—after having been some time in a state of painful suspense,—as usual, returned to London victorious.\*

We are next to see him in a new capacity—conducting a prosecution for a blasphemous libel. Paine's "Age of Reason," a most scurrilous and insulting attack on the Christian religion, had lately appeared—which rendered the author and publisher liable to severe punishment; leaving only one question for consideration,—whether more mischief was likely to arise to the community from the wider circulation the infamous work might obtain by the notoriety of a public trial, or from allowing it to pass with entire impunity? The Government abstained from prosecuting, but "The Society for the Suppression of Vice and Immorality" preferred an indictment against a bookseller of the name of Williams, at whose shop it was sold, and retained Erskine for their counsel as prosecutors. I shall give a few extracts from his beautiful address to the jury:—

"For my own part, gentlemen, I have been ever deeply devoted to the truths of Christianity; and my firm belief in the Holy Gospel is by no means owing to the prejudices of education (though I was religiously educated by the best of parents), but has arisen from the fullest and most continued reflections of my riper years and understanding. It forms at this moment the great consolation of a life which as a shadow passes away; and without it I should consider my long course of health and prosperity (too long, perhaps, and too uninterrupted to be good for any man) only as the dust which the wind scatters, and rather as a snare than as a blessing." Having read and commented on some of the most obnoxious parts of the book, he continued: "In running the mind over the long list of sincere and devout Christians, I cannot help lamenting that Newton had not lived to this day to have had the darkness of his understanding illuminated by this new flood of light. But the subject is too awful for irony. I will speak plainly and directly. Newton was a Christian!—Newton, whose mind burst forth from the fetters

\* Erskine's Speeches, v. 93—168; 26 St. Tr. 463—529

fastened by nature upon our finite conceptions !—Newton, who carried the line and rule to the uttermost barriers of creation, and explained the principles by which all created matter exists and is held together !” In a similar strain he appealed to the testimony of Boyle, Locke, and Hale, and then introduced a still greater name : “ But it is said by the author that the Christian’s fable is but the tale of the more ancient superstitions of the world, and may be easily detected by a proper understanding of the mythologies of the Heathens. Did Milton understand these mythologies ? Was HE less versed than Mr. Paine in the superstitions of the world ? No ! they were the subjects of his immortal song, and he poured them forth from the stores of a memory rich with all that man ever knew, and laid them in their order as the illustration of real and exalted faith—the unquestionable source of that fervid genius which has cast a shade on the other works of man :—

‘ He pass’d the flaming bounds of place and time,  
The living throne, the sapphire blaze,  
Where angels tremble while they gaze.  
He saw—but, blasted with excess of light  
Closed his eyes in endless night.’

But it was the light of the body only which was extinguished. The celestial light shone inward, and enabled him to ‘*justify the ways of God to man.*’”—He does not conclude without a tribute to the benefits of free and enlightened discussion :—“ I do not dread the reasonings of Deists against the existence of Christianity itself, because, as was said by its Divine Author, ‘*if it be of God it will stand.*’—An intellectual book, however erroneous, addressed to the intellectual world, upon so profound and complicated a subject, can never work the mischief which this indictment is calculated to repress. Such works will only incite the minds of men, cultivated by study, to a closer investigation of a subject well worthy of their deepest and continued contemplation. The changes produced by such reciprocations of lights and intelligences are certain in their progression, and make their way imperceptibly by the final and irresistible power of truth. If Christianity be founded in falsehood, let us become Deists in this manner, and I am contented. But this book has no such object, and no such capacity : it presents no arguments to the wise and the educated ; on the contrary, it treats the faith and opinions held sacred by the British people with scoffing and ribaldry, and tends to make the thoughtless multitude view with contempt the obligations of law and the precepts of morality.”

A Mr. Stewart Kid, counsel for the defendant, having, without the authority of his client, delivered a most indecent address to the jury, defending the sentiments and the language of “ The Age of Reason,” Erskine, in reply, entered at considerable length into the evidences of the Christian religion. He asked,—

“ Is there a person of the least knowledge who suffers himself to doubt,  
VOL. VIII. Z

that, in the most comprehensive meaning of Scripture, the prophecy of its universal reception is fast fulfilling, and certainly must be fulfilled? For my own part, gentlemen of the jury, I have no difficulty in saying to you, not as counsel in this cause, *but speaking, upon my honour, for myself*, (and I claim to be considered as an equal authority, at least, to Mr. Paine, on the evidence which ought to establish any truth,) that the universal dispersion of the Jews throughout the world, their unexampled sufferings, and their invariably distinguished characteristics, when compared with the histories of all other nations, and with the most ancient predictions of their own lawgivers and prophets concerning them, would be amply sufficient to support the truths of the Christian religion, if every other record and testimony on which they stand had irrecoverably perished.”\*

The jury instantly found a verdict of GUILTY.

In the ensuing term Erskine moved for judgment, and the defendant was committed to gaol, while the Judges considered what sentence they should pronounce. In the mean time, the learned counsel saw reason to decline being longer concerned for the “Society,” and returned their retainer. A statement of the circumstances which induced him to adopt this unusual step, he communicated many years afterwards in an interesting letter to the Editor of the “State Trials:”—

\* Erskine's declaration was soon after referred to from the pulpit by a right reverend prelate: “In our own times, more particularly, a man of distinguished talents and acknowledged eminence in his profession, and in the constant habit of weighing, sifting, and scrutinising evidence with the minutest accuracy in courts of justice, has publicly declared that he considered this prophecy, if there were nothing else to support Christianity, as *absolutely irresistible*.”—*Lectures by Porteus, Bishop of London*, ii. 212. 10th edit.

In a letter from Erskine, now lying before me, in reference to this prosecution, he says, —“My opening speech, correctly as it was uttered in court, is in Mr. Ridgway's collection of my speeches at the Bar. It was first printed by the Society, and circulated to a very wide extent,—which gave me the greatest satisfaction; as I would rather that all my other speeches were committed to the flames, or in any manner buried in oblivion, than that a single page of it should be lost.”

Some of his Liberal admirers were a little alarmed by the part he had taken in this prosecution. The following is his answer to the famous TIM BROWN, who had called upon him for an explanation—

“My dear Sir,

“I had the pleasure of your letter last night on my return from Bridgewater. I shall find no difficulty in giving you the explanation you desire respecting the trial of the ‘Age of Reason,’ but I can do it more completely over a bottle of your white Hermitage at Camberwell than by writing, and that I will do as soon as you please. If you read my opening as copied from the Times, it is a very correct representation; in which you will find nothing that considers every writing to be a libel which questions the principles of the establishment of the *National Church*, of which I have a very indifferent opinion, and in which I take no sort of interest. The grounds on which I arraigned the ‘Age of Reason’ are the simplest and most obvious in the world; and I scarcely know any subject so important, but so totally misunderstood, as the true principles and the proper limits of the liberty of the press,—the abuse of which is as destructive of all society and of the blessings to be derived under it, as the use of it is the corner-stone of society.

“Most faithfully yours,

“T. ERSKINE.

“August 28th, 1797.”

"Having convicted Williams, as will appear by your report of his trial, and before he had notice to attend the Court to receive judgment, I happened to pass one day through the Old Turn-  
 stile, from Holborn, in my way to Lincoln's Inn Fields, when in the narrowest part of it I felt something pulling me by the coat: on turning round, I saw a woman at my feet bathed in tears, and emaciated with disease and sorrow, who continued almost to drag me into a miserable hovel in the passage, where I found she was attending upon two or three unhappy children in the confluent small-pox, and in the same apartment, not above ten or twelve feet square, the wretched man whom I had convicted was sewing up little religious tracts, which had been his principal employment in his trade; and I was fully convinced that his poverty, and not his will, had led to the publication of this infamous book, as, without any kind of stipulation for mercy on my part, he voluntarily and eagerly engaged to find out all the copies in circulation, and to bring them to me to be destroyed. I was most deeply affected with what I had seen; and feeling the strongest impression that he offered a happy opportunity to the prosecutors of vindicating, and rendering universally popular, the cause in which they had succeeded, I wrote my opinion to that effect, observing (if I well remember) that mercy being the grand characteristic of the Christian religion, which had been defamed and insulted, it might be here exercised not only safely, but more usefully to the objects of the prosecution, than by the most severe judgment, which must be attended with the ruin of this helpless family. My advice was most respectfully received by the Society, and I have no doubt honestly rejected, because that most excellent prelate Bishop Porteus, and many other honourable persons, concurred in rejecting it; but I had still a duty of my own to perform, considering myself not as counsel for the Society, but for the Crown. If I had been engaged for all or any of the individuals composing it, prosecuting by indictment for any personal injury punishable by indictment, and had convicted a defendant, I must have implicitly followed my instructions, however inconsistent with my own ideas of humanity or moderation; because every man who is injured has a clear right to demand the highest penalty which the law will inflict: but in the present instance I was only responsible to the Crown for my conduct. Such a voluntary Society, however respectable or useful, having received no injury, could not erect itself into a *custos morum*, and claim a right to dictate to counsel who had consented to be employed on the part of the King for the ends of justice only. Whether I was right or wrong, I will not undertake to say; but I am most decidedly of opinion that, if my advice had been followed, and the repentant publisher had been made the willing instrument of stigmatising and suppressing what he had published, Paine's Age of Reason would never again have been printed in England."

The defendant was sentenced to a year's imprisonment, with hard labour, in the House of Correction for the county of Middlesex.<sup>b</sup>

<sup>b</sup> 26 St. Tr. 653—720; Erskine's Speeches, ii 183.

It has often been remarked, that men most accustomed to  
 May 12, appear before the public, when examined in a court  
 1798. of justice make the worst witnesses. Garrick being  
 called to explain what is "a free benefit," nothing could be  
 got out of him except that "a free benefit is a free benefit."  
 Erskine now exemplified the same remark by talking too  
 much. Arthur O'Connor being tried for high treason, on a  
 charge which afterwards turned out to be perfectly well  
 founded, although the Crown could not produce sufficient  
 evidence against him, the whole body of the Opposition, from  
 whom he had concealed his traitorous correspondence with  
 France, came forward to give him a character for loyalty.  
 Erskine's evidence will be amusing—at least to my profes-  
 sional readers, who remember the rules by which he ought to  
 have been bound:—

Q. "You know Mr. O'Connor?"—A. "I do."—Q. "How long  
 have you known him?"—A. "I have known him between two and  
 three years, and I live a great deal with those with whom Mr. O'Connor  
 lives much when he is in this country. Mr. O'Connor's friends in this  
 country are principally those persons who are my friends. [The Attor-  
 ney-General interposing]—I do not stand here to argue the admissibility  
 of evidence; and you may depend upon it I shall strictly adhere to giv-  
 ing answers to questions. Mr. O'Connor has principally lived with per-  
 sons of high rank in the public world—Mr. Fox, Mr. Grey, Mr. Sheri-  
 dan—all that class of gentlemen with whom I have acted in Parliament.  
 I know Mr. O'Connor's character as well as I can be acquainted with  
 the character of any gentleman who lives principally in another country,  
 but whom I have seen frequently here."—Q. "Shall I beg the favour  
 of you to state what that character is?"—A. "In my opinion, the best  
 character that any man can possibly possess. I have a sincere regard  
 and esteem for Mr. O'Connor, founded upon my opinion and belief that  
 he is a man of the strictest honour and integrity—a man not only  
 capable of making, but who has made, great sacrifices to what he thinks  
 right. If there be any more prominent feature in his character than  
 another, as far as I am acquainted with it,—and I am much acquainted  
 with it,—it is a noble-mindedness and a high spirit of honour; and I  
 therefore feel myself not only entitled, but bound upon my oath, to say,  
 in the face of God and my country, as a British gentleman, which is the  
 best thing any man can be, that he is incapable in my judgment of act-  
 ing with treachery or duplicity to any man, but most of all to those for  
 whom he professes friendship and regard; and I do know positively, of  
 my own knowledge, that he has been in the constant course of profess-  
 ing, not only regard, but admiration and enthusiasm, for the persons  
 whose names I mentioned."—Q. "Did you ever observe any difference,  
 either upon public or private subjects, between himself and you?"—A.  
 "Recollecting the station I hold in the law, I should be little desirous



to urge upon the Court any thing that could be at all questionable in point of evidence ; otherwise I could, if the Court thought it right, state many instances of his persevering in the same opinions and in the same regards : this I may say generally, that upon my oath I never had any reason to think that Mr. O'Connor's principles and opinions differed from my own." The Attorney-General having again objected, the witness continued :—"I am obliged to Mr. Attorney-General, but I do assure the Court that I might have been in another situation, where those objections could not have been made ; I might have been defending Mr. O'Connor as one of his counsel, but I felt my situation as a witness, so that I declined." "

There is said to have been much tittering in court excited by this egotistical garrulity.

Shortly afterwards, Erskine, again in his proper sphere as an advocate, was beheld with universal respect and admiration. Arthur O'Connor, having been acquitted by the jury at Maidstone, where he was tried,—conscious of the fresh charges which might be brought against him,—wished to leave the court as soon as the verdict was pronounced ; but a new warrant had been issued to arrest him,—which the officer now attempted to execute. A scuffle took place, in court, between those who wished to seize him and those who favoured his escape. The Government, rather vindictively, alleged, that in the latter class were Sackville Earl of Thanet, a great Whig nobleman, and Mr. Cutlar Fergusson, a young barrister of fine talents and high honour, afterwards Advocate-General at Calcutta, and Judge Advocate to Queen Victoria,—with several others of inferior note,—and included them all in a prosecution for a conspiracy to rescue Mr. O'Connor from the custody of the sheriff of Kent. The case was tried at the King's Bench bar, before Lord Kenyon and his brethren.

Erskine, on this occasion, as counsel for the defendants, displayed consummate ability in commenting upon the evidence, and was most successful in showing that no sufficient case was made for the Crown by Mr. Justice Heath and the respectable witnesses who were called, and that the Bow-street officers, who themselves had wantonly begun the riot, were not to be believed. His speech is the best specimen I know of this most difficult and important species of eloquence, upon which the fortune, the life, and the fame of our fellow-citizens frequently depend ; but it can only be relished in a

critical perusal of the whole trial. Drawing to the conclusion, he said :—

“The noble and learned Lord, who presides here to-day, where the proofs have been much stronger, has been in the habit of saying to juries, ‘This is not a case for conviction; the defendant *may* be guilty, but there is not a sufficient preponderance in the evidence to pronounce a penal judgment.’ These are the maxims, gentlemen, which have given to British courts of justice their value in the country and with mankind. These are the maxims which have placed a guard around them in the opinions and affections of the people. I admit that this consideration deeply enhances the guilt of him who would disturb the administration of such an admirable jurisprudence. But if the Courts of England are so popular and estimable—if they have been through ages after ages the source of public glory and private happiness—*why is this trial to furnish an exception?* For myself, I can only say, that I wish to do my duty, and nothing beyond it. Govern us who will, I desire only to see my country prosperous, the laws faithfully administered, and the people living under them happy and contented. Let England be secure, and no ambition of mine shall ever disturb her. I should rather say, if I were once disengaged from the duties which bind me to my profession,—

‘Oh for a lodge in some vast wilderness,  
Some boundless contiguity of shade,  
Where rumour of oppression and deceit,  
Of unsuccessful and successful war,  
Might never reach me more!’”

There can be little doubt that there would have been an acquittal, if Mr. Sheridan had not, unfortunately, been called to give evidence for the defendants, and presented to the world another instance of the difference between a great orator and a good witness. On cross-examination by Mr. Law, he was asked this question, “Whether, from the conduct of the defendants, as it fell under his observation, he did not believe they meant to favour the escape of Mr. O’Connor?” Now, he was not asked, and could not lawfully have been asked, his belief as to their *secret wishes*—and he was only to give an opinion upon their conduct as it fell under his observation. But he chose to say, “My belief is, that they *wished* him to escape; but, from any thing I saw of their conduct upon that occasion, I am not justified in saying so;” and though he swore positively, on re-examination, that “he did not believe they took any part in rescuing Mr. O’Connor,” the jury, never getting over his declaration as to their *wishes*, found them all guilty.

Mr. Fergusson, in addressing the Court when he was

brought up to receive sentence, declined to dwell upon the nature of the charge, the proofs by which it was supported, or his own peculiar situation; saying,—“I cannot so soon have forgotten the manner in which these topics were urged in your Lordships’ presence in the course of that defence which was made for me by the most zealous of friends, the most able and eloquent of men:” and he thus concluded a Preface to a report of the trial which he published:—“Of his defence let those who heard it judge. It is sufficient to say—and more cannot be said—that it equalled any of those former exertions by which he has for ever shut out all higher praise. I have long enjoyed a portion, perhaps beyond my merits, of his countenance and friendship. It had ever been my study to seek the approbation of a man whom for the mild and amiable features of his private character I esteem and love—whom for the noble and manly features which mark his public conduct I admire and venerate—whom the force of genius and eloquence has raised to a height in his profession where he excites no envy, and whose whole life—a life not untried on the slippery stage of politics, nor unexposed to the allurements of corrupt ambition—has been a life of honour, integrity, and independence. During a period of twenty years he has fought every arduous contest in which the rights of his countrymen and the cause of general liberty have been involved. So many and splendid have been the triumphs of his eloquence that they have left him no further honours to attain:—

————— ‘Nil jam, Theodore, relictum  
Quo virtus animo crescat, vel splendor honore,  
Culmen utrumque tenes.’ ——— d

From a doubtful case, I have to go to one that was clearly most discreditable both to the Judge and jury who decided upon it, although they were solemnly warned of their duty by the great advocate whose splendid career we are following. The throne of Russia was now filled by that madman, Paul, who, among other freaks, had lately published, in the most wanton manner, an edict prohibiting the exportation of tim-

a 27 St. Tr. 821—986. Erskine's Speeches, iv. 139—411. The Court for some time doubted whether, as the riot was laid to have taken place “before the King's Judges,” they were not bound to pronounce the specific judgment “that the right arm of each defendant should be cut off;” but finally sen-

tenced Lord Thanet to a year's imprisonment and a fine of 1000*l.*, and Mr. Fergusson to the same length of imprisonment and a fine of 100*l.* They both made affidavit of their innocence, and their conviction and punishment are sad proofs of the violence of the times.

ber, deals, and other naval stores, whereby the commerce of this country was greatly crippled, and a severe injury was inflicted on his own subjects. The following paragraph, which had previously appeared in several other journals, was copied in the Commercial Intelligence of the "Courier," a newspaper then in strong opposition to the Government:—"The Emperor of Russia is rendering himself obnoxious to his subjects by various acts of tyranny, and ridiculous in the eyes of Europe by his inconsistency; he has now passed an edict prohibiting the exportation of timber, deals, &c. In consequence of this ill-timed law, upwards of one hundred sail of vessels are likely to return to this kingdom without freights." For this the Attorney-General filed a criminal information against the proprietor, printer, and publisher of the Courier. In vain did Erskine point out that as the facts stated in the paragraph were allowed to be true, the commentary upon them was justifiable, and that there was here no malicious defamation of a foreign government, but only a wish to point out the wrongs of British subjects. However, Lord Kenyon, sneering at the late Libel Act, said, "I am bound by my oath to declare my own opinion, and I should forget my duty if I were not to say to you that it is a *gross libel*." <sup>e</sup> The jury found the defendants guilty, and they were sentenced to fine and imprisonment.<sup>f</sup>

In the present Memoir I have only one other case of libel to mention, and this likewise should make us gratefully to rejoice that we live in better times. Mr. Cuthell, one of the most respectable booksellers in London, dealt almost exclusively in classical works, and had published the philological writings of the Rev. Gilbert Wakefield. That eminent scholar, being the author of a political pamphlet in answer to one by the Bishop of Llandaff, employed Mr. Johnson, of St. Paul's Church Yard, to publish it; but some copies were sent to Mr. Cuthell's shop, and his servant, without authority, sold a few of them. As soon as Mr. Cuthell was aware of the nature of the publication, he stopped the sale of it. Nevertheless, in addition to criminal informations against the

<sup>e</sup> Mr. Fox's Act only requires the Judges to give their opinion on matter of law in libel cases as in other cases. But did any Judge ever say, "Gentlemen, I am of opinion that this is a wilful, malicious, and atrocious murder"? For a considerable time after the Act passed against the unani-

mons opposition of the Judges, they almost all spitefully followed this course. I myself heard one Judge say, "As the legislature requires me to give my own opinion in the present case, I am of opinion that this is a diabolically atrocious libel."

<sup>f</sup> 27 St. Tr. 627—642.

author and the publisher, a criminal information was filed against Mr. Cuthell, which came on for trial at Guildhall, before Lord Kenyon. The pamphlet was such as would not now be noticed by the Attorney-General,—consisting chiefly of strong charges of misconduct against the existing Administration, with an exaggerated picture of the deplorable condition to which the country was reduced. But Erskine, as counsel for the defendant, declined entering into the question of libel or no libel; contending, by the following unanswerable arguments, that the defendant was not criminally responsible, having been ignorant of the contents of the pamphlet, and the publication having been without his authority:—

“In the case of a *civil* action—throughout the whole range of civil injuries—the master is always *civiliter* answerable for the acts of his servant or agent; and accident or neglect can therefore be no answer to a plaintiff complaining of consequential wrong. If the driver of a public carriage, by gross negligence, overturns the passengers on the road while the proprietor is asleep in his bed at a hundred miles distance, the proprietor must unquestionably pay the damages to the last farthing. The servant may be liable to indictment, and to suffer an infamous judgment; *could the master also become the object of such a prosecution?* CERTAINLY NOT! In the same manner, partners in trade are *civilly* answerable for bills drawn by one another, or by their agents under procuration, though fraudulently and in abuse of their trust; but if one partner commits a fraud by forgery, or fictitious indorsements, so as to subject *himself* to death or other punishment by indictment, *could the other partners be indicted?* To answer such a question here would be folly; because it not only answers itself in the *negative*, but exposes to scorn every argument which would confound indictments with civil actions. Why, then, is *printing and publishing* to be an exception to every other human act? Why is a man to be answerable *criminaliter* for the act of his servant in this case more than in all others? As far, indeed, as damages go, the principle is intelligible and universal; but as it establishes a *crime*, and inflicts a punishment, it is shocking to humanity, and insulting to common sense. The Court of King’s Bench, since I have been at the Bar, (very long, I admit, before the noble Lord presided in it, but under the administration of a truly great Judge,) pronounced the infamous judgment of the pillory on a most respectable proprietor of a newspaper, for a libel on the Russian Ambassador, copied, too, out of another paper, but which I myself showed to the Court, by the affidavit of his physician, appeared in the first as well as in the second paper whilst the defendant was on his sick-bed in the country, delirious in a fever. I believe that affidavit is still on the files of the Court. I have thought of it often—I have dreamed of it, and started from my sleep—sunk back to sleep—and started from it again. The

painful recollection of it I shall die with. How is this to be vindicated—from the *supposed* necessity of the case. An indictment for a libel is, *therefore*, considered to be an anomaly in the law. *It was held so, undoubtedly*; but the exposition of that *error* lies before me;—the Libel Act lies before me, which expressly and in terms directs that the trial of a libel shall be conducted *like* every other trial for every other crime; and that the jury shall decide, not upon the mere fact of *printing and publishing*, but *upon the whole matter put in issue*, i. e. the publication of the libel WITH THE INTENTION CHARGED BY THE INDICTMENT. This is the rule by the Libel Act, and you, the jury, as well as the Court, are bound by it.”

Lord Kenyon, however, acting on former precedents, and saying that the passing of the Libel Bill was “a race for popularity between two seemingly contending parties, who then chose to run amicably together,” the defendant was found *guilty*.—The case was so revolting, that after a short imprisonment he was discharged on paying a fine of thirty marks. <sup>g</sup>

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## CHAPTER CLXXXII.

CONTINUATION OF THE LIFE OF LORD ERSKINE TILL HIS VISIT TO PARIS  
DURING THE PEACE OF AMIENS.

I COME to Erskine's last, and perhaps his greatest, display of genius in defending a party prosecuted by the Crown April 26, 1800. —his speech as counsel for James Hadfield, indicted for shooting at King George III. in Drury Lane Theatre. It is now, and will ever be, studied by medical men for its philosophic views of mental disease,—by lawyers for its admirable distinctions as to the degree of alienation of mind which will exempt from penal responsibility,—by logicians for its severe and connected reasoning,—and by all lovers of genuine eloquence for its touching appeals to human feeling. A few

<sup>g</sup> 27 St. Tr. 641—680. Erskine's Speeches, vol. v. 213—246. There had been one case (the King against the Rev. Bate Dudley, proprietor of the *Morning Post*) in which Erskine, having William Pitt for his junior, had obtained so acquittal under similar circumstances against the summing up of Lord Mansfield. Unfortunately there is no report

of this trial extant.—The grievance is at last effectually redressed by “Lord Campbell's Libel Bill,” which expressly admits the defence to an indictment or criminal information for a libel, that the publication was by a servant without any authority from the defendant.

detached extracts can only excite a desire to peruse the whole composition, the different parts of which will be found beautifully to illustrate and to give force to each other. It should be remembered that a strong impression had been made by the case for the prosecution, and that the Judges, the jury, and all present viewed with just horror the attempt proved to have been made by an assassin upon the life of a beloved Sovereign. Thus Erskine began, in a subdued and solemn tone, to win the sympathies of his hearers, and to prepare them for the discussion of the awful and mysterious question arising from the distinction between the insanity of passion, unaccompanied by delusion, and that total derangement of the intellectual faculties which ought to exempt from punishment acts the most atrocious:—

“The scene which we are engaged in, and the duty which I am not merely *privileged* but *appointed* by the authority of the Court to perform, exhibits to the whole civilised world a perpetual monument of our national justice. The transaction, indeed, in every part of it, as it stands recorded in the evidence already before us, places our country and its government and its inhabitants upon the highest pinnacle of human elevation. It appears that upon the 15th of May last, his Majesty, after a reign of forty years, not merely in sovereign power, but spontaneously in the very hearts of his people, was openly shot at (or to all appearance shot at) in a public theatre in the centre of his capital, and amidst the loyal plaudits of his subjects; YET NOT A HAIR OF THE HEAD OF THE SUPPOSED ASSASSIN WAS TOUCHED. In this unparalleled scene of calm forbearance, the King himself, though he stood first in personal interest and feeling, as well as in command, was a singular and fortunate example. The least appearance of emotion on the part of that august personage must unavoidably have produced a scene quite different and far less honourable than the Court is now witnessing: but his Majesty remained unmoved, and the person *apparently* offending was only secured, without injury or reproach, for the business of this day.” After the advocate had gracefully insinuated himself into the favour of the jury by an appeal to their loyal sympathies, he comes to discuss the question on which their verdict was to depend:—“It is agreed by all jurists, and is established by the law of this and every other country, that it is the reason of man which makes him accountable for his actions, and that the deprivation of reason acquits him of crime. This principle is indisputable: yet so fearfully and wonderfully are we made,—so infinitely subtle is the spiritual part of our being,—so difficult is it to trace with accuracy the effect of diseased intellect upon human action, that I may appeal to all who hear me, whether there are any causes more difficult, or which indeed so often confound the learning of the Judges themselves, as when insanity, or the effects and consequences of insanity, become the subjects of legal consideration and judgment? Your province, to-day, will be to

decide whether the prisoner, when he did the act, was under the uncontrollable dominion of insanity, and was impelled to it by a morbid delusion; or whether it was the act of a man who, though occasionally mad, or even at the time not perfectly collected, was yet not actuated by the disease, but by the suggestion of a wicked and malignant disposition. It is true, indeed, that in some, perhaps in many, cases the human mind is stormed in its citadel, and laid prostrate under the stroke of frenzy: these unhappy sufferers, however, are not so much considered by physicians as maniacs, as in a state of delirium from fever. There, indeed, all the ideas are overwhelmed, for Reason is not merely disturbed, but driven from her seat. Such unhappy patients are unconscious, therefore, except at short intervals, even of external objects, or at least are wholly incapable of understanding their relations. Such persons, and such persons alone (except idiots), are wholly deprived of their understandings, in the Attorney-General's sense of that expression. But these cases are not only extremely rare, but can never become the subjects of judicial difficulty. There can be but one judgment concerning them. In other cases Reason is not driven from her seat, but Distraction sits down upon it along with her, holds her trembling upon it, and frightens her from her propriety. Such patients are victims to delusions of the most alarming description, which so overpower the faculties, and usurp so firmly the power of realities, as not to be dislodged and shaken by the organs of perception and sense: in such cases the images frequently vary, but in the same subjects are generally of the same terrific character. *Delusion*, therefore, where there is no frenzy or raving madness, is the true character of insanity; and where it cannot be predicated of a man standing for life or death for a crime, he ought not, in my opinion, to be acquitted; and if courts of law were to be governed by any other principle, every departure from sober, rational conduct would be an emancipation from criminal justice. I shall place my claim to your verdict upon no such dangerous foundation. I must convince you not only that the unhappy prisoner was a lunatic within my own definition of lunacy, but that the act in question was the IMMEDIATE UNQUALIFIED OFFSPRING OF THE DISEASE."<sup>h</sup>

Having at considerable length, and with never-failing spirit and distinctness, propounded and illustrated his doctrine, he proceeded to give a most interesting narrative of the life of his unhappy client, who had served abroad as a soldier,—who was brave and orderly,—who had received in battle a wound which laid his head open to the brain,—who had ever after been subject to fits of insanity, for which he had been in confinement,—who had recently taken up the notion that his immediate death

<sup>h</sup> When I quoted this last sentence on the trial of Oxford for shooting at Queen Victoria, Lord Denman said "he thought the criterion here proposed was rather too unfavourable to the party accused, and that

Erskine, on this occasion, felt himself safe in extending criminal responsibility so far, knowing that he could prove a clear case of positive delusion as a defence for his client."



by violence, if he did not commit suicide, would produce some great benefit to mankind,—and who, although he was loyally attached to the King and the whole royal family, had formed the resolution to fire at his Majesty from the pit of the theatre, so that he might be sure to be apprehended and executed for high treason. The evidence of the Duke of York had made a very deep impression on the jury, as he said, “I saw the prisoner in a room at Drury Lane immediately after his apprehension; the moment I entered, he said, ‘God bless you, I know your Royal Highness; you are the Duke of York—I served under you.’ I said, ‘I think you have been one of my orderlies.’ He answered, ‘Yes, I have.’ I then asked him particularly ‘when?’ he said, ‘The day after the battle of Fraymar.’ I had a long conversation with him, during which he seemed perfectly to understand the subjects on which we conversed. He said once or twice that he knew perfectly well that his life was forfeited. He said that he was tired of life, and he regretted nothing but the fate of a woman who was his wife. There was no irregularity in his conversation from which I could collect any existing derangement of his understanding; on the contrary, he appeared to speak as connectedly as possibly could be.” Erskine completely took off the effect by introducing some anecdotes, which, while they amused the attention of the jury, bore directly on the issue they had to try:—

“I conceive, gentlemen, that I am more in the habit of examination than either that illustrious person, or the witnesses who have spoken in similar terms; yet I well remember (indeed I never can forget it) that since the noble and learned Judge has presided in this Court, I examined for the greater part of a day, in this very place, an unfortunate gentleman, who had indicted a most affectionate brother, together with the keeper of a mad-house at Hoxton, for having imprisoned him as a lunatic, whilst, according to his own evidence, he was in his perfect senses. I was unfortunately not instructed in what his lunacy consisted, although my instructions left me no doubt of the fact; but not having the clue, he completely foiled me in every attempt to expose his infirmity. You may believe I left no means unemployed which long experience dictated, but without the smallest effect. The day was wasted; and the prosecutor, by the most affecting history of unmerited suffering, appeared to the Judge and jury, and to a humane English audience, as the victim of most wanton and barbarous oppression. At last Dr. Sims came into Court, who had been prevented by business from an earlier attendance. From him I learned that the person who, under my long examination, had appeared to be so rational, intelligent, and ill-used, believed himself to be the Lord and Saviour of mankind—

not merely at the time of his confinement, which was alone necessary for my defence, but during the whole time he had been triumphing over every attempt to surprise him in the concealment of his disease. I then affected to lament the indecency of my ignorant examination,—when he expressed his forgiveness, and said, with the utmost gravity and emphasis, in the face of the whole Court, ‘I AM THE CHRIST :’—and so the cause ended.” He then related, in the words of Lord Mansfield, a still more extraordinary instance of monomania, accompanied with cunning to conceal it:—“A man of the name of Wood had indicted Dr. Munro, for keeping him as a prisoner when he was sane. He underwent a most severe cross-examination from the defendant’s counsel without exposing his infirmity: but Dr. Battye having come upon the bench by me, and having desired me to ask him ‘what was become of the princess with whom he had corresponded in cherry-juice,’ he showed in a moment what he was. He answered, that ‘there was nothing at all in that, because having been (as every body knew) imprisoned in a high tower, and being debarred the use of ink, he had no other means of correspondence but by writing his letters in cherry-juice, and throwing them into the river which surrounded the tower, where the princess received them in a boat.’ There existed of course no tower, no imprisonment, no writing in cherry-juice, no river, no boat, no princess,—but the whole was the inveterate phantom of a morbid imagination. I immediately directed Dr. Munro to be acquitted. But this madman again indicted Dr. Munro, in the city of London, through a part of which he had been carried to his place of confinement. Knowing that he had lost his cause by speaking of the princess, at Westminster, (such is the wonderful subtlety of madmen,)—when he was cross-examined on the trial in London, as he had successfully been before, in order to expose his madness, all the ingenuity of the Bar and all the authority of the Court could not make him say a single syllable upon that topic which had put an end to the indictment before, although he still had the same indelible impression upon his mind, as he signified to those who were near him; but, conscious that the delusion had caused his former defeat, he obstinately persisted in holding it back. His evidence at Westminster was then proved against him by the short-hand writer;—and I again directed an acquittal.”

Erskine opened in the following affecting words, which are said to have drawn tears from almost all present,—the evidence he was to give of a recent attempt by the prisoner upon the life of a child whom he tenderly loved:

“To proceed to the proofs of his insanity down to the very period of his supposed guilt: This unfortunate man before you is the father of an infant of eight months, and I have no doubt whatever that, if the boy had been brought into court (but this is a grave place for the administration of justice, and not a theatre for stage effect)—I say, I have no doubt whatever that, if this poor infant had been brought into court, you would have seen the father writhing with all the emotions of

parental affection;—yet upon the Tuesday preceding the Thursday when he went to the play-house, you will find his disease still urging him forward, with the impression that the time was come when he must be destroyed for the benefit of mankind; and in the confusion, or rather delirium, of this wild conception, he came to the bed of the mother who had this infant in her arms, and, snatching it from her, was about to dash out its brains against the wall in her presence, when his arm was arrested from the dreadful attempt.”

Having clearly distinguished this case from that of Lord Ferrers and others of the same class,—confidently anticipating an acquittal, he thus quietly concluded, as if he had been the judge summing up the case to the jury:

“Nothing can more tend to the security of his Majesty and his Government than the scene which this day exhibits, in the calm, humane, and impartial administration of justice. I declare to you solemnly, that my only aim has been to secure for the prisoner at the bar, whose life and death are in the balance, that he should be judged rigidly by the evidence and the law. I have made no appeal to your passions—you have no right to be swayed by them. This is not even a case in which, if the prisoner be found guilty, the royal mercy should be counselled to interfere: he is either an accountable being or not accountable: if he was *unconscious* of the mischief he was engaged in, he is *not guilty*; but if, when the evidence closes, you think he was conscious, and that he maliciously meditated the treason he is charged with, it is impossible to conceive a crime more detestable; and I should consider the King’s life to be ill attended to indeed, if not protected by the full vigour of the laws, which are watchful over the security of the meanest of his subjects. It is a most important consideration, both as it regards the prisoner and the community of which he is a member. Gentlemen, I leave it with you.”<sup>1</sup>

He had perceived some time, from the looks and nods of the jury, that they were impatient to acquit. After a few witnesses had been examined, Lord Kenyon stopped the trial, on the ground that a case of insanity, at the very time when the pistol was fired, had been clearly made out. An Act of Parliament passed (40 Geo. 3, c. 94) for the detention, during the pleasure of the Crown, of persons acquitted of treason or felony on the ground of insanity. Under this Act, Hadfield was confined in Bedlam many years; and it is said that he not only sur-

<sup>1</sup> Lord Erskine, in a letter (now lying before me) to Mr. Howell, the very learned editor of the “State Trials,” says,—“It is lucky you have got Hadfield. I hope you have printed my speech as published by

Ridgway, as there were many blunders in Gurney’s copy, who was then getting very old. None of my speeches have been so much read and approved.”

vived George III., but all the judges, all the jurymen, and all the counsel, who had taken part in his trial.<sup>k</sup>

I should give a defective sketch of Erskine's career at the Bar if I did not mention his merits as an advocate in civil actions. Unfortunately very few specimens of his eloquence in this kind have been preserved; but we know, from undoubted contemporary authority, that he here shone unrivalled,—varying in the display of talent according to the opportunity of displaying it. For many years he was in almost every cause tried at *Nisi prius* at Westminster and at the Guildhall of the City of London, before Lord Mansfield and Lord Kenyon. He was generally retained by the plaintiff; and, whether his client sued on a bill of exchange, or on a policy of insurance, or for an assault, or for defamation, or to establish a doubtful pedigree, or to impeach the validity of a will, or for a breach of promise of marriage, or for the seduction of a daughter or a wife, he did all for his client that could be effected by zeal, ingenuity, boldness, discretion, insight into the human heart, and control over human feelings.

He was almost invariably successful when he went upon special retainers. Indeed, to preserve the *prestige* of his invincibility, he declined (as he was entitled to do, according to professional etiquette) being counsel in a desperate case to be tried in a Court in which he did not usually practise.—He met with one signal defeat, which he recollected with deep mortification to the close of his life. This was in *Day v. Day*, tried at the Huntingdon Assizes, before Mr. Justice Heath, in the year 1797. It turned out to be the Douglas cause over again in miniature,—the question being, whether the defendant, who had been brought up as heir to a considerable family and a large estate, was not a supposititious child purchased from a poor woman in a workhouse. Erskine was for the plaintiff, and he himself considered his speech on this occasion as amongst his very best forensic efforts. Secure of victory, he thus magnanimously spoke of the defendant:

“Notwithstanding the suspicions which from the beginning obscured and questioned his birth, he was, nevertheless, acknowledged by his

<sup>k</sup> When he had become a very old man, I was introduced to him by Dr. Haslam, the author of several works upon madness,—to which calamity he contended all men were subject, less or more. The supposed assassin was reading a newspaper, and talked very

rationaly upon the topics of the day; but he continued at times subject to strong delusion, and it would have been unsafe to have discharged him from custody.

See 27 St. Tr. 1281—1358. Erskine's Speeches, v. 1—48.

family, and has arrived at man's estate with the feelings of a gentleman. I learn, indeed, that his conduct and character are every way worthy of a genuine descent. I hear the very best report of him from all quarters, and it makes a strong and painful impression upon me. I am wholly a stranger in this place, utterly unknown, I believe, to all of you whom I am addressing; but I might safely appeal to those around the table who have long known me, whether they think me capable of enjoying any triumph or gratification in being even the instrument of the justice I seek at your hands, when the administration of it must give so much pain to a deserving individual wholly guiltless of the fraud which placed him in his present station.—In such a case the best minds find it the most difficult to be just; because the understanding shrinks back from its office, and the heart pulls against the faithful discharge of such a distressing jurisdiction. But it is necessary, in equal justice, to contemplate the other side of the case, and to be made impartial by revolving in your minds the situation of the plaintiff if the defendant's birth be really supposititious."

The case as opened was sworn to by several witnesses; but their credit was a good deal shaken in cross-examination; and after a summing up from Mr. Justice Heath, which appears to me very fair, the jury found a verdict for the defendant.

Erskine, on his return to London, wrote a letter to the plaintiff's attorney, in which he says, "The charge of the Judge is a reproach to the administration of English justice, being, from the beginning to the end of it, a mass of consummate absurdity, and ignorance of the first rules of evidence. If he had done his duty, I think the verdict would have been otherwise. You, however, have the consolation to reflect, that you have not been wanting in any part of the duty cast upon you; and I have the greatest pleasure in assuring you that, in the whole course of my professional life, I never saw greater vigilance, nor a more enlightened course of proceeding, than has marked and distinguished you in this unfortunate business." A rule for setting aside the verdict, and for a trial at bar, having, after long argument, been discharged, Erskine, more indignant, thus addressed the attorney: "My opinion of Mr. Day's cause you can scarcely believe to be at all altered; my mind must be indeed shallow in the extreme if any thing which passed in the King's Bench could make any other impression upon it than that of utter contempt for the prejudices of judges in the blind support of one another's errors. Kenyon's mind is of a size, and, generally speaking, of a character, to disdain such a course; but he appears to me to have laid aside his reason in the speech he

Aug. 3,  
1799.

March 16,  
1798.

delivered."—Many years after he said, in a letter to the plaintiff, who was then about to publish the trial, "Take care not to abridge a syllable of Mr. Justice Heath's charge; when the whole appears together, nothing but the utmost contempt can follow." And when the publication came out, he thus again addressed him: "Nothing could be more perfectly honourable and just than your conduct throughout in the painful and unprosperous endeavour to establish your inheritance. The best possible vindication of your conduct is to have published, *as you have done*, a faithful account of the proceedings. I should be sorry, however, if I had been formerly a Common Law Judge, that the public should have to read such evidence as you have printed, and *such a summing up* of mine."<sup>m</sup>

It was in actions for *criminal conversation* that he was thought chiefly to excel. He joined with all right-judging persons in condemning the English law that permits, and, indeed, with a view to a divorce, requires, an injured husband to seek a pecuniary compensation for his dishonour: but when called upon to dwell upon the happiness arising from the purity of domestic life, and the ruin produced by its contamination, while performing his forensic duties he inculcated morality, perhaps, more forcibly than some orthodox divines from their pulpits. His two most celebrated speeches upon this subject—one when he was for the plaintiff, and the other when he was for the defendant—are preserved, having been published under his own superintendence. The first was *Markham v. Faucet*, in which the action was brought by a clergyman, the son of the Archbishop of York, against a country gentleman who lived in his parish, and with whom he had been on terms of great intimacy. After describing the long-continued friendship of the parties, he thus continued:

"Yet, dreadful to relate, and it is the bitterest evil of which the plaintiff has to complain, a criminal intercourse, for nearly five years before the discovery of the connection, had most probably taken place. I will leave you to consider what must have been the feelings of such a husband, upon the fatal discovery that his wife—and such a wife—had

<sup>m</sup> . . . "Manet altâ mente repostum  
Judicium Paradis."—

This letter bears date 2nd Feb. 1823, within a few months of Lord Erskine's death.

I have heard an anecdote (which was probably a pure invention) that he thus successfully took off the effect of another strong summing up against him in an important

cause. Old Mr. Justice Gould, the presiding Judge, being hardly audible, and quite unintelligible to the jury, Erskine, sitting in their view, nodded assent to all that was said; and—making them believe that the law was laid down altogether in his favour—obtained the verdict.

conducted herself in a manner that not merely deprived him of her comfort and society, but placed him in a situation too horrible to be described. . . . He does not know at what time this heavy calamity fell upon him. He is tortured by the most afflicting of all human sensations. When he looks at the children whom he is by law bound to protect and to provide for, and from whose existence he ought to receive the delightful return which the union of instinct and reason has provided for the continuation of the world, he knows not whether he is lavishing his fondness and affection upon his own children, or upon the seed of a villain, sown in the bed of his honour and his delight. He starts back with horror, when, instead of seeing his own image reflected from their infant features, he thinks he sees the destroyer of his happiness,—a midnight robber introduced into his house under professions of friendship and brotherhood,—a plunderer, not in the repositories of his treasure, which may be supplied, or lived without,—*‘but there where he had garnered up his hopes—where either he must live, or bear no life.’* God himself, as he has constituted human nature, has no means of alleviating such an injury as this. While the sensibilities, affections, and feelings which he has given to man remain, it is impossible to heal a wound which strikes so deep into the soul. . . . I have established a claim for damages that has no parallel in the annals of fashionable adultery. It is rather like the entrance of sin and death into this lower world. The pair were living like our first parents in Paradise, till this Demon saw and envied their happy condition. Like them, they were in a moment cast down from the pinnacle of human happiness into the very lowest abyss of sorrow and despair. In one point, indeed, the resemblance does not hold, which, while it aggravates the crime, redoubles the sense of suffering. *‘It was not an enemy that hath done me this dishonour, for then I could have borne it. Neither was it mine adversary that did magnify himself against me; for then peradventure I would have hid myself from him: but it was even thou, my companion, my guide, mine own familiar friend.’*”<sup>a</sup>

In *Howard v. Bingham*, which was an action of the same description by the heir presumptive to the Duke of Norfolk against the eldest son of the Earl of Lucan, Erskine was counsel for the defendant, but made his client appear the party aggrieved. There had been a mutual attachment between the lady, a daughter of Lord Fauconberg, and the defendant: they had been engaged to be married before her acquaintance with the plaintiff, and her parents had broken off that match for what appeared the superior advantages of a new offer. This was the theme of Erskine’s splendid apology, or rather retaliation, and countercharge:

“I have the noble Judge’s authority for saying that the gist of this

<sup>a</sup> Erskine’s Speeches, v. 169—195.

action is the plaintiff's loss of the comfort and society of his wife by the seduction of the defendant. The loss of her affection and of domestic happiness are the only foundations of his complaint. Now, before any thing can be lost, it must have *existed*,—before any thing can be taken away from a man, he must have had it,—before the seduction of a woman's affections from her husband can take place, he must have possessed her affections. . . . In order, therefore, to examine this matter (and I shall support every syllable that I utter with the most precise and incontrovertible proofs), I will begin by drawing up the curtain of this blessed marriage-bed, whose joys are supposed to be nipped in the bud by the defendant's adulterous seduction. Nothing certainly is more delightful to the human fancy than the possession of a beautiful woman in the prime of health and youthful passion; it is beyond all doubt the highest enjoyment which God in his benevolence and for the wisest purposes has bestowed upon his own image: I reverence as I ought that mysterious union of mind and body which, while it continues our species, is the source of all our affections,—which builds up and dignifies the condition of human life,—which binds the husband to the wife by ties more indissoluble than laws can possibly create, and which, by the reciprocal endearments arising from a mutual passion, a mutual interest, and a mutual honour, lays the foundation of that parental affection which dies in the brutes with the necessities of nature, but which reflects back upon the human parents the unspeakable sympathies of their offspring, and all the sweet, delightful relations of social existence. While the curtains therefore are still closed on this bridal scene, your imaginations will naturally represent to you this charming woman, endeavouring to conceal sensations which modesty forbids the sex, however enamoured, too openly to reveal,—wishing beyond adequate expression what she must not even attempt to express, and seemingly resisting what she burns to enjoy. Alas, gentlemen! you must prepare to see in the room of this a scene of horror and of sorrow; you must prepare to see a noble lady, whose birth surely required no further illustration; who had been courted to marriage before she heard even her husband's name; and whose affections were irretrievably bestowed upon and pledged to my honourable and unfortunate client. You must behold her given up to the plaintiff by the infatuation of parents, and stretched upon the bridal bed as upon a rack,—torn from the arms of a beloved and impassioned youth, himself of noble birth,—only to secure the honours of a higher title,—a legal victim on the altar of heraldry. Gentlemen, this is no high colouring for the purpose of a cause; no words of an advocate can go beyond the plain unadorned effect of the evidence: I will prove to you that when she prepared to retire to her chamber, she threw her desponding arms around the neck of her confidential attendant, and wept upon her as a criminal preparing for execution: I will prove to you that she met her bridegroom with sighs and tears—the sighs and tears of afflicted love for Mr. Bingham, and of rooted aversion to her husband. Gentlemen, this was not the sudden burst of youthful disappointment, but the fixed and settled habit of a



mind deserving of a happier fate. I shall prove that she frequently spent her nights upon a couch, in her own apartments, dissolved in tears; that she frequently declared to her woman that she would rather go to Newgate than to Mr. Howard's bed; and it will appear by her own confession that for months subsequent to the marriage she distinctly refused him the privileges of a husband. . . . My learned friend deprecates the power of what he terms my pathetic eloquence. Alas, gentlemen, if I possessed it, the occasion forbids its exertion, because Mr. Bingham has only to defend himself, and cannot demand damages from Mr. Howard for depriving him of what was *his* by a title superior to any law which man has a moral right to make. Mr. Howard was NEVER MARRIED: God and nature forbade the banns of such a marriage. If, indeed, Mr. Bingham this day could have by me addressed to you his wrongs in the character of a plaintiff demanding reparation, what damages might I not have asked for him!—and without the aid of this imputed eloquence, what damages might I not have expected! I would have brought before you a noble youth, who had fixed his affections upon one of the most beautiful of her sex, and who enjoyed hers in return,—I would have shown you their suitable condition,—I would have painted the expectation of an honourable union, and would have concluded by showing her to you in the arms of another, by the legal prostitution of parental choice in the teeth of affection,—with child by a rival, and only reclaimed at last, after so cruel and so afflicting a divorce, with her freshest charms despoiled and her very morals in a manner impeached, by asserting the purity and virtue of her original and spotless choice. Good God! imagine my client to be PLAINTIFF, and what damages are you not prepared to give him! And yet he is here as DEFENDANT, and damages are demanded against him. Oh, monstrous conclusion!”

He went on in the same strain above an hour longer, taking occasion to warn the aristocracy of the ruin which the mercenary spirit which was here displayed would bring upon their order. The jury, as they afterwards declared, were resolved to find a verdict for the defendant, with heavy damages to be paid to him,—till they were reminded by the Judge that no blame was imputable to the plaintiff, as he had not been made aware of the previous engagement; that when the lady, under whatever influence, had vowed to be his at the altar, and their hands had been joined by the priest, she became his wife according to the laws both of God and man; that their sacred union ought to have been respected by the defendant, however much he was to be pitied, as his wrongs were irremediable; that it was his duty to have fled from temptation, instead of cherishing a guilty flame; that he had inflicted an injury for which he was liable to make compensation, by rendering it impossible for the plaintiff ever to win

the affections of his wife, or to behold her more; that the jury were bound by their oaths to find a verdict for the plaintiff, if they believed that the adultery had been committed, and that they would not be justified in affixing a brand upon him by awarding trifling damages. The jury at last did find for the plaintiff, damages 500*l.*,—10,000*l.* being the lowest sum which in such cases was then usually awarded.<sup>o</sup>

In the case of *Dunning v. Sir Thomas Turton*, of which we have a very imperfect report, Erskine appears to have produced, perhaps, a still greater effect by describing the state of a husband fondly attached to his wife, but suspecting her fidelity,—painting in the most lively colours the different emotions of his soul—the agonies of suspense—the feverish irritation of unrelieved doubt—the struggles of the wounded spirit as to a fact which, while the heart wanted to disbelieve, reason told him was but too true. The advocate excited the most thrilling emotions when he quoted from *Othello*—

“Oh! what damned minutes tells he o’er  
Who dotes, yet doubts; suspects, yet strongly loves!”

“But,” added he, with overwhelming force, “when suspicion is realised into certainty, and his dishonour is placed beyond the reach of doubt, Despair assumes her dominion over the afflicted man, and well might he exclaim from the same page—

. . . . ‘Had it pleased Heaven  
To try me with affliction; had He rain’d  
All kinds of sores and shames on my bare head;  
Steep’d me in poverty to the very lips;  
Given to captivity me and my hopes,  
I should have found in some place in my soul  
A drop of patience. But now——’”

He stopped, and tears filled every eye. His recitation was perfect; and his felicitous quotations, though carefully premeditated, seemed the spontaneous recollections of the moment.<sup>p</sup>

It is with unfeigned sorrow that I must take leave of Erskine as an advocate at the Bar, where his superiority to the rest of mankind was so striking,—and that I must now attend him through scenes in which he acted a subordinate part,

<sup>o</sup> Erskine's Speeches, v. 195—212.

<sup>p</sup> I was told by a barrister who had often been in causes with him that he used to produce his proposed quotations at consultation

the night before, and take the opinion of his juniors upon them; but my learned informant was noted for “shooting with a long bow.”

and in which justice requires that he should sometimes be severely censured.

During the concluding years of Mr. Pitt's first Administration, Erskine almost entirely absented himself from <sup>A.D. 1798—</sup>the House of Commons, despairing of his party and <sup>1801.</sup> of the country, and defending the measures of secession to which the Opposition leaders then imprudently resorted. I do not much wonder that he should have refused to take part in the debates concerning the conduct of the war; for the prostrate Whigs were not able to get a hearing either in or out of Parliament, when they attempted to touch upon this subject, —tremendous majorities approving of the expedition to Holland,—of the expedition to Ferrol,—of the expedition to Quiberon,—and of wasting the strength of the nation in taking sugar islands in the West Indies, for the extension of the slave trade. But it is remarkable that he should have been silent upon the Union with Ireland, and other great constitutional questions which were from time to time brought before the House of Commons. He probably persuaded himself that it was better for the public that he should offer no resistance to the measures of the Government; and he had no pleasure in going from Westminster Hall, where he was applauded and triumphant, to St. Stephen's Chapel, where his powers of persuasion utterly failed, and where he was sometimes even slighted. He did speak in favour of several bills not connected with politics; but he considered it vain to combat the supremacy of Pitt, who, having carried the Irish Union, and annihilated the Whig Opposition, seemed more firmly established in power than at any former period.

At the opening of the first session of the United Parliament of Great Britain and Ireland, a rumour arose, that, from the failure of his attempt to grant Catholic emancipation, or from a desire that peace should be negotiated by another Minister, Pitt was about voluntarily to descend into the rank of a private citizen. This strange Ministerial crisis, prolonged by the mental alienation of the King, I have described in the Life of Lord Loughborough, and I must recur to it in the Life of Lord Eldon, as it terminated in transferring the Great Seal from the one to the other. But Erskine had no share in it; for the Whigs had only to look on as spectators—the struggle being between different sections of their opponents,—and no prospect appeared of their ever being restored to power. When Mr. Addington was, at last, installed in office, several

of them, with a view to rescue him from the thralldom of Pitt, were inclined to support him; and there actually was a negotiation opened for Erskine becoming Attorney-General.

"During the Administration of Addington," says Mr. Moore, "Erskine, led by the example of Lord Moira, Sheridan, Tierney, and others of the friends with whom he usually acted, manifested a willingness to support the new Minister, and was even on the point of accepting the office of Attorney-General. Overtures to that effect having been transmitted to him by Mr. Addington, he thought it his duty to lay them before the Prince of Wales, whose service, in case of an acceptance of the office, it would be necessary for him to relinquish. In his answer, conveyed through Mr. Sheridan, the Prince, while he expressed the most friendly feelings towards Erskine, declined, at the same time, giving any opinion as to either his acceptance or refusal of the office of Attorney-General if offered to him under the present circumstances. His Royal Highness also added the expression of his sincere regret that a proposal of this nature should have been submitted to his consideration by one of whose attachment and fidelity to himself he was well convinced, but who ought to have felt, from the line of conduct adopted and persevered in by his Royal Highness, that he was the very last person who should have been applied to for either his opinion or concurrence respecting the political conduct or connections of any public character, especially of one so intimately connected with him and belonging to his family. Upon this expression of the Prince's sentiments, the offer was of course declined."

By listening to this overture Erskine incurred no suspicion of vacillation; for he really believed, at the time, that Mr. Addington not only was desirous of making peace, but that he meant to depart from the arbitrary policy which had been adopted, since the year 1792, with respect to the internal government of the country.\*

\* Life of Sheridan, ii. 323.

† The following are extracts of letters which he wrote to a friend while this negotiation was going on:—"I know and feel my own high station in the profession (which, I may say in a private letter, no man ever held before for such a number of years), and I know and feel also the etiquette it imposes upon me with regard to my juniors, however accidentally placed above me by temporary political offices. But so far am I on that account from wishing to stand in the way of the advantages which such accidents may be thought, from custom, to have conferred, or may hereafter confer, upon those

who hold them, that I should be the very last man in the world to take the least interest in finding any precedents, if any were wanting, for supporting any disposition in any body to support my advancement out of the proper course of things." . . . "For myself, I can say positively, that if all the high offices in the law were to fall vacant to-morrow, and to be filled up without any thought of me, it would not in the slightest degree affect the conduct which I have prescribed to myself, from the best attention I have been able to give to that line of conduct which the public ought to expect from me, and which my conscience approves." . . .

He showed his steady adherence to his old principles by the part which he soon after took in the projected coalition with the "Grenville-Windhamites," as they were called,—a section of Mr. Pitt's colleagues that had gone out with him, and were now desirous of having Mr. Fox for their leader, with a view of vigorously pushing on the prosecution of the war.—He was one of those who met at Norfolk House, for the purpose of frankly remonstrating with Mr. Fox against the offered alliance; and the remonstrance then agreed to, strongly marked by generous sentiments of private friendship and of enlightened patriotism, was said to have been drawn up by him."

Without joining the Administration, he gave it his countenance. The peace of Amiens being concluded, he voted with the majority in approving of it; and he made a vigorous speech in defence of the Convention with Russia for defining some of our controverted belligerent rights against neutrals. On this occasion he said:—

"I cannot, Sir, refuse myself the pleasure of expressing the most unqualified approbation of the manner in which the Convention has been so happily concluded. Not long ago I saw three great nations of the North confederated against the vital interests of our country; yet in so short a time afterwards I now see the same powers pledged to concur with us in their support, by upholding our ancient system of international law. The effect of such a successful conspiracy must have been to establish universally, that free bottoms should make free goods, because they who denied the right of search, and enforced the refusal, annihilated every regulation against enemies' property as contraband of war, since it is only by search that the invasion of neutrality can be detected. The right of search is now recognised as the general law of civilised states. We have preserved the honour and interests of our own country by not forgetting that other countries have honour and interests also. Without this reasonable compromise we could not have had a peace so likely to continue, for it will be pursued as it was made—in the spirit of peace. I wish France and every other nation to see that our divisions are at an end. We have made many sacrifices in the course of the late contest, and we must make many more to redeem our country from the consequences of a war, the continuance of which might have been fatal to it and to the whole civilised world. I hope, Sir, that Ministers will now pursue towards their fellow-subjects the same liberal policy which upon this occasion they have shown towards adversaries. This is still wanting. I am now looking forwards, and confidently maintain that, if the people of Great Britain and Ireland were

"I am in a lucrative and honourable situation, and I will remain in it till the time comes (if it ever does) when I can vindicate

to friends and foes the change in my situation."

" Moore's Life of Sheridan, ii. 324.

governed according to the spirit of our laws, mildly administered, they would, to use the language of Mr. Burke, 'for ever cling and grapple to you, and nothing could tear them from their allegiance.' Nothing, indeed, can estrange them from our invaluable Constitution but shutting them out from its benefits." \*

During the present session, Erskine again came forward in the debate caused by Mr. Nicholl's motion to "thank <sup>May 7,</sup> the Crown for the removal of Mr. Pitt;" and Sir H. <sup>1802.</sup> Mildmay's amendment, "That Mr. Pitt, for his services while Minister, deserved the gratitude of the House." He was particularly severe on Mr. Pitt's injudicious refusals to treat for peace with Bonaparte; and on his resignation,—which he represented as "a desertion of the vessel of the state when she was labouring in the tempest, and in danger of being dashed to pieces among the rocks which surrounded her." The vote of thanks, however, was carried by a majority of 224 to 52,<sup>7</sup> partly from the recollection of Pitt's former Administration, and still more from the anticipation that he must ere long be Minister again.

## CHAPTER CLXXXIII.

CONTINUATION OF THE LIFE OF LORD ERSKINE TILL HE BECAME LORD CHANCELLOR.

IN the long vacation of this year, Erskine went to Paris, where he expected that he must be gazed at—on <sup>A.D. 1802.</sup> account of his fame as an advocate, and the leading part which he conceived he had taken for many years in the House of Commons; but his vanity was considerably mortified by his reception there. He knew hardly any thing of the French language, so that he could not assist in spreading his own fame;—none of his forensic speeches had been translated into French, and his political consequence was utterly extinguished by the presence of Fox, who had gone over to collect materials for his "History of the Reign of James II.," and was run after as a prodigy. We have the following account

\* 36 Parl. Hist. 278.

<sup>7</sup> 1bid. 616, 653.

from an eye-witness of our hero's reception by the First Consul:—

“Bonaparte, at the levee, made a long florid address to Fox, to which the modest statesman made no reply. Erskine's presentation followed. I am tempted to think that he felt some disappointment at not being recognised by the First Consul; there was some difficulty at first, as Erskine was understood to speak little French. Monsieur Talleyrand's impatient whisper to me, I fancy I yet hear: ‘*Parle-t-il François ?*’ Mr. Merry, the English Consul, already fatigued with his presentations, and dreading a host to come, imperfectly designated Erskine—when the killing question followed, ‘*Etes-vous légiste ?*’ This was pronounced by Bonaparte with great indifference, or, at least, without any marked attention.”\*

Erskine was better treated at the Cour de Cassation, if we may credit Monsieur Berryer the Elder, who, in his “*Souvenirs*,” is rather imaginative:—

“One morning,” says he, in narrating his visit to London in 1822, “I repaired to the Court of King's Bench, accompanied by a solicitor, with no other intention than that of being present as a looker-on at one of its sittings. The Attorney-General perceives my white head, the only one in the crowd; he sends a *huissier*, bearing a wand of ivory, to speak to me. The *huissier* presses through the crowd, reaches the place where I stand, and in a few words of English, translated by my solicitor, invites me to follow him to the bar of the amphitheatre set apart for the advocates. The bar opens. Two young advocates, in wigs, à la *Louis Quatorze*, came forward to introduce me. All the advocates—the Broughams, the Scarletts, being of the number—rise to salute me. I was dressed in a plain black surtout. My two young attendants assigned me a seat between them. They keep me, during the sitting, *au courant* of what is going on. It was a bankruptcy matter; under an inquiry by a jury. The jury having retired to deliberate, I took a respectful leave of the advocates *en masse*.—All the London newspapers of the day following gave a report, highly flattering to both countries, on this solemn

\* Trotter's Memoirs of Fox, p. 268. However, the Right Hon. Thomas Erskine writes to me,—“Mr. Trotter has misunderstood the circumstance to which he alludes, obviously in no friendly spirit. My father was introduced to Bonaparte, not by name, but by his official title as Chancellor to the Prince of Wales. The First Consul, not knowing the nature of this office, or the name of the individual who filled it, put the question, ‘*Etes-vous légiste ?*’ When my father was afterwards, at an evening party given by Madame Josephine, introduced to the hero by his name, Napoleon alluded to his former interview by saying, ‘You are better known to me

by your name than your office.’”

Curran, who was then likewise at Paris, escaped the mortification of such a question being addressed to him, by luckily keeping away from Bonaparte's levee. Thus he wrote to a friend while still in some doubt upon the subject:—“I don't suppose I shall get myself presented to the Consul; not having been privately baptized at St. James's would be a difficulty;—to get over it a favour;—and then the trouble of getting myself costumed for the show;—and then the small value of being driven like the beasts of the field before Adam when he named them. I think I shan't mind it.”

reception of a Parisian advocate. I have since ascertained that it was by way of return for my having, twenty years before, procured the famous Erskine a reception equally warm from all my brethren at one of the sittings of the Appeal Court at Paris."

But if Erskine had not more to boast of from the attention paid to him by his brethren at Paris than Berryer had in London, I can testify, from having been present at the scene so pompously described, that much was left to be supplied by self-complaisance and imagination. I well recollect regretting that more was not done to testify our sense of the honour conferred upon us by a visit from such a distinguished foreign jurist. We could not have summoned him by a *huissier* with a *wand of ivory*, having no officer with any such emblem of dignity; and it would have been contrary to our customs to have interrupted a jury-trial by the Bar all rising in a body to do homage to any stranger, however distinguished,—were he even a crowned head. But we ought to have taken care that M. Berryer was placed on the bench, by the side of the Judge, whereas he was squeezed in among the barristers; and although several of them spoke to him very courteously, he remained in an inconvenient seat during a tedious trial respecting an act of bankruptcy, which could not be made intelligible to him; and when the jury withdrew to consider their verdict he left the court, with his "solicitor," almost unnoticed.

During this visit to Paris, Erskine was placed in a situation of great embarrassment by meeting in society the man whose political principles he had vouched to be exactly the same as his own, and who had since, having confessed his treasons, been banished by Act of Parliament, and had engaged in the military service of France. "At a sumptuous dinner given by Madame Cabarras, *ci-devant* Tallien, to Fox, Erskine, and other distinguished foreigners, to the surprise and displeasure of some, Arthur O'Connor was a guest. Erskine was extremely uneasy, remembering how much he had been deceived in his testimony at Maidstone, and afraid lest evil report should misrepresent this matter in England; but Fox treated it as unavoidable, though unlucky. He spoke to O'Connor as usual."\* I confess that this seems to me to have been carrying complaisance to a hurtful extreme, and that Erskine did better by avoiding all conversation with a man who had violated alike the duties of allegiance and of friendship.

\* Trotter's Memoirs of Fox.



Erskine was well pleased to return to England, and he never again revisited the Continent—not even after the battle of Waterloo, when he might have seen his kilted countrymen encamped in the Champs Elysées, and, clad in tartan, mounting guard with claymore in hand at the Louvre. He was hardly acquainted with any modern language except his own, and he felt a great loss of comfort and of consequence when he found himself in company where that was not spoken. It must likewise be confessed that, although his mind was highly cultivated and his taste exquisitely formed by an intense study of the English classics, he was not familiar with foreign literature, and he had but a small stock of general political science; so that, even with the assistance of an interpreter, he was not well qualified to shine in the Parisian salons, notwithstanding his elegant manners, which announced his birth and breeding wherever he appeared.

Soon after his return he gave a striking proof of the unenvious disposition, and the generosity to those who might be considered rivals, which distinguished him through life. We were now at peace with France, and Napoleon Bonaparte, made Consul for life, was acknowledged by us as the Chief Magistrate of that state. On the complaint of his minister,—Mr. Perceval, the Attorney-General, had filed an *ex officio* information against Peltier, the editor of the *Ambigu*, a French newspaper, published in London, for a libel,—and this *cause célèbre* attracted the attention of all Europe. Erskine would have been well pleased with the *éclat* of being counsel for the defendant, and with the opportunity of defending the liberty of the press in England from such an attack upon it by a foreign despot. Yet he heard without repining that this task was intrusted to Mackintosh; and when the day of the trial arrived, instead of sulkily absenting himself, he attended as one of the audience to listen to the author of the *VINDICLÆ GALLICÆ*, and to countenance and encourage him.<sup>b</sup> Feb. 21, 1803.  
Before going to bed, the admired, though defeated, orator received the following hearty tribute of praise:—

“DEAR MACKINTOSH,

“I cannot shake off from my nerves the effect of your most powerful and wonderful speech, which so completely disqualifies you for Trinidad or India. I could not help saying to myself as you were speaking, ‘O

terram illam beatam, quæ hunc virum acceperit, hanc ingratham si egerit, miseram si amiserit.' I perfectly approve of the verdict, but the manner in which you opposed it I shall always consider as one of the most splendid monuments of genius, learning, and eloquence.

"Yours ever,

\* Monday evening."

"T. E.

And he felt as he wrote. He was not made wretched by the success of another man in a department in which he himself had succeeded; nor did he incite dependants to malignant criticisms in reviews, nor himself descend to anonymous slander in the newspapers, for the purpose of mitigating the anguish of his alarmed vanity. On the contrary, he not only received Mackintosh with a smiling countenance when they met, but, behind his back and in all societies, cordially strove to swell his reputation and to advance his fortune."

Soon after followed the rupture of the peace of Amiens; and so general was the conviction that this was forced on by the First Consul, that the Whigs almost all joined in openly applauding the recommencement of hostilities, and in the pledge to carry on the war with vigour. According to the Parliamentary History, "Mr. Erskine warmly expressed his sense of the vindictive disposition and proceedings of France. To some parts of the conduct of Ministers in the negotiation and of the address he urged objections; but he assured them of his readiness to contribute at all times and by every method in his power toward the effectual resistance of all aggression either upon the dominion, the interests, or the honour of the country."<sup>d</sup> The same record informs us that when the Property Tax was first proposed, "Mr. Erskine declared himself ready to support it—not that he approved of it in principle, but because he was convinced of the necessity of making great exertions at so perilous a moment as the present. He felt it necessary that great sacrifices should be made; and although he felt that his own professional income was not worth above two years' purchase, he would gladly give up any part that could be asked for the general service of the country."<sup>e</sup>

<sup>c</sup> Life of Sir James Mackintosh, vol. i. p. 182. Adolphus, in giving an account of Peltier's trial, says,—"The speech pronounced for him was highly complimented by the most eminent advocates, and in print it displays a masterly specimen of vigorous conception,

glowing description, and powerful reasoning; but in Court it produced no effect, for without a moment's hesitation, the jury returned a verdict of *guilty*."—Vol. vii. p. 655.

<sup>d</sup> Vol. xxxvi. 1386.

<sup>e</sup> Parl. Hist. xxxvi. 1663

The population of this island now exhibited that military spirit which is so well described by Walter Scott in the "Antiquary," which I myself witnessed when a student in the Inns of Court, and which I trust would, under similar circumstances, again blaze forth with equal ardour. Bonaparte was collecting his mighty armament at Boulogne with the avowed intention of invading our shores, and he had foolishly exasperated the quarrel by detaining in custody all British subjects in his power at the renewal of the war,—whereby he in no degree weakened our means of resistance, while he considerably increased among us the rancour against himself, and the readiness to submit to every sacrifice in the hope of being revenged. Of the 300,000 volunteers enrolled and disciplined, the lawyers in the metropolis raised two regiments—the B.I.C.A., or Bloomsbury and Inns of Court Association, and the "Temple Corps," generally called "The Devil's Own." The command of the latter was conferred upon Erskine. Having myself served in the ranks of the former, I am not able from personal observation to criticise his military prowess,<sup>f</sup> but I well remember we heard many stories of the blunders which he committed, and we thought ourselves lucky to be under the orders of Lieutenant-Colonel Cox, a warlike Master in Chancery.<sup>g</sup> While our rivals could boast of most of the dignitaries of the law, and were renowned for their "belly-gerent" appearance,<sup>h</sup> we consisted chiefly of lean students and briefless barristers;<sup>i</sup> so that we were in great hopes that, if we did go into the field, before the end of the

<sup>f</sup> I did once, and once only, see him putting his men through their manœuvres, on a summer's evening in the Temple Gardens; and I well recollect that he gave the word of command from a paper which he held before him, and in which I conjectured that his "instructions" were written out as in a *Brief*.

<sup>g</sup> Of the other two most noted volunteer commandants in the metropolis, one had been a miller, and went by the name of Marshal *Sacks*; and the other actually was a pastry-cook in the City, famous for selling good turtle-soup, and he was dubbed Marshal *Tureen*.

<sup>h</sup> Law, then Attorney-General, afterwards Lord Chief Justice Ellenborough, was reported to be a fair specimen of them; for, even with the help of chalk, he never could be taught the difference between marching with

his right or his left foot foremost; and all the time he was in the service he continued in the awkward squad.

<sup>i</sup> There were likewise a good many attorneys belonging to us, who brought down many jests upon us,—among others, that upon the word being given "prepare to charge," they all pulled out pen, ink, and paper; and being ordered to "charge," they wrote down 6s. 8d. or 13s. 4d.—The soul of our corps was our adjutant, my poor friend Will Harrison, who with us could talk of nothing but battles, and seemed to think himself as great a military genius as Napoleon, although he talked much law at regimental messes, which he was fond of dining at,—so that it was said he was "a General among Lawyers, and a Lawyer among Generals."

campaign fatigue alone would make great openings for us in Westminster Hall and on all the circuits. We had drills every morning, and many field days; but we never had any harder service than being reviewed by George III. in Hyde Park, along with all the volunteers of the metropolis, on a very rainy day. Both the Law corps were especially noticed by his Majesty, who caused much jealousy among us of the B.I.C.A. by his particularly gracious return to the salute of Lieutenant-Colonel Erskine. Many severe colds were caught, but there was no casualty to cause any promotion in the profession, the servants of the seniors waiting for them with cloaks and umbrellas as soon as they were dismissed from the parade. Lord Eldon in his old age gave the following account of this spectacle:—"I think the finest sight I ever beheld was the great review in Hyde Park before George III. The King in passing addressed Tom Erskine, who was Colonel, asking him the name of his corps. He answered, 'The Devil's Own.' The Lincoln's Inn volunteers<sup>k</sup> always went by the name of 'The Devil's Invincibles.'"<sup>m</sup>

Soon afterwards, Bonaparte having broken up his encampment at Boulogne, and marched into Germany, the military ardour of the lawyers greatly subsided; and although Erskine nominally retained the command of his corps, he became remiss in the discharge of his regimental duties—being entirely above the affectation of pretending to a knowledge of strategy, and the folly of "playing at soldiers."<sup>n</sup>

He now came before the public in a manner much more to his taste. Other civilians, as well as the lawyers, were weary of military manœuvres when the danger of invasion had passed by, and longed to retire; but the Government wished to keep up the force on its present footing, and insisted that they were bound to serve during the war. The Attorney and Solicitor-General having given an opinion to this effect, Erskine was consulted, and thus expressed himself respecting the nature and extent of the engagement of volunteers:—"If the term *volunteer* is supposed to be satisfied by the original spontaneousness of the enrolment, leaving him afterwards indefinitely bound, then every inlisted soldier must equally be considered to be a volunteer, and, with the difference of receiving money, and the local extent of

<sup>k</sup> Meaning the B.I.C.A.

<sup>m</sup> Twiss's Life of Eldon, i. 283.

<sup>n</sup> I know not what he did with his sword

when he was made Lord Chancellor. I still preserve my musket, which I mean to hand down as an heir-loom in my family.

service excepted, would be upon an equal footing, both as to merit and independence. Such a doctrine appears to me to be equally unjust and impolitic;—unjust, because for the volunteer's engagement there is no consideration but the sense of honour and duty, the reward of which is sullied if the service does not continue to be voluntary;—impolitic, because it is overlooking a motive of action infinitely more powerful than the force of any human authority, to take no account of that invincible sensibility in the mind of man for the opinion of his fellow-creatures." He further examined the statutes upon the subject, and came to the clear conclusion that any member of a volunteer corps might resign at pleasure, although while he continued to serve he was subject to military law. The conflicting opinions were published in all the newspapers, and caused general confusion, till the question was regularly brought before the Court of King's Bench, of which Lord Ellenborough was now the distinguished head. The case having been elaborately argued by Perceval the Attorney-General on the one side, and Erskine on the other, the Judges unanimously determined in favour of the power of resignation;° and the champion of it was extolled as a great lawyer as well as advocate, if not as a great military commander.

The regulation of the volunteer force occasioned much discussion in the House of Commons, and was finally made the subject on which Mr. Addington was turned out of office. In truth, while his intentions were allowed to be excellent, and his private character was above exception, he had not the confidence of any party, and there was a general wish in the nation that the government should be in abler hands, although the King continued highly pleased with his Minister, and would have much preferred him to Pitt as well as to Fox.

A clause having (contrary to the decision of the Court of King's Bench) been introduced into the "Volunteer Consolidation Bill" to prevent the resignation of volunteers till the conclusion of a general peace, Erskine strenuously opposed it, saying, "The foundation of the decision of the Court of King's Bench was the nature of the service. If a man comes out under arms upon the occasion of an invasion, what is the duration of his engagement? The duration of his engagement is as long as the enemy continues

A.D. 1804.

° *Rex v. Dowley*, 4 East, 512. ;

in the country ; but that continuance is not necessarily and at all events the same as the duration of the war. From the obstinacy of our enemies, or from a legitimate desire to retaliate upon them, and to reduce their power within safe bounds, we may be obliged to carry on war with them long after all danger of invasion—all apprehension of invasion—has ceased. Till then you may safely trust to that patriotism which has animated the whole population of the country with the desire of fighting for her independence. If there are volunteer corps who wish to extend their services, and to carry arms till the conclusion of a general peace, let them be authorised hereafter to do so ; but do not touch the right of resignation now enjoyed under the solemn judgment of the highest Court in Westminster Hall.” The clause was withdrawn.<sup>p</sup>

Although Erskine continued a member of the House of Commons nearly two years longer, this was his last speech in that assembly.

In a few weeks afterwards Mr. Addington's Administration came to an end, and Mr. Pitt resumed the reins of government, which he held with undivided and uncontrolled power till his death. A Coalition Government had been expected, including Mr. Fox with the “old Opposition” and Lord Grenville with the “new Opposition ;” but Lord Grenville would not accept office without Mr. Fox, and the King's prejudice against that statesman could not yet be surmounted. It is very doubtful whether Mr. Pitt used much urgency to gain this end, although, in the very critical state of public affairs, it was generally desired by the nation. I am afraid he was well pleased to find that he had in the Cabinet no one whom he did not consider his creature and dependent. He paid a dreadful penalty for the supremacy he grasped. While planning his new coalition against Napoleon, he was, no doubt, buoyed up by the hope of a successful issue to the contest, which would have placed his name even above that of his illustrious sire ; but after the man whom he hoped to conquer had taken Ulm, and gained the battle of Austerlitz, he saw nothing before himself but disgrace and despair ; and he not only found that it would be impossible for him much longer to retain his position as Minister, but, notwithstanding our naval triumphs, the safety of the state was endangered by the policy he had pursued. His brave heart was broken, and

death relieved him from the mortification of being exposed, in the House of Commons, to the reproaches and sneers of those whose advice and predictions he had despised. Erskine, although he had invariably been opposed in politics to the departed statesman, and had often been the object of his sarcasms, on the present melancholy occasion generously joined with those who only recollected his splendid talents and his elevated patriotism, and concurred in voting a public funeral to him and in granting a sum of money for the payment of his debts. Jan. 23,  
1806.

The mind of our illustrious advocate was now softened by deep domestic grief. A few weeks before, he had lost his wife, to whom he was tenderly attached, who had been his faithful companion in his early struggles against penury, and who had enjoyed more than himself the fame and high position which he afterwards achieved. On a tablet erected to her memory in Hampstead Church, he thus recorded her virtues :— Dec. 1805.

“ Near this place  
lies buried  
THE HONOURABLE FRANCES ERSKINE,  
the most faithful  
and  
most affectionate of Women.  
Her husband,  
THOMAS LORD ERSKINE,  
an Inhabitant of this Parish,  
raised this monument  
to  
her lamented memory,  
A.D. 1807.”<sup>9</sup>

After a feeble attempt to reconstruct the Cabinet under Lord Hawkesbury, who remained Chief only long enough to appoint himself Mr. Pitt's successor as Lord Warden of the Cinque Ports, Lord Grenville was sent A.D. 1806.

<sup>9</sup> On a marble tablet in the same church is the following inscription in honour of the ninth Earl of Buchan:

“ Near this place lies buried  
THE RIGHT HONOURABLE DAVID ERSKINE,  
EARL OF BUCHAN,  
LORD CARDESS,  
LORD AUCHTERHOUSE, &c. &c.  
Died October 14th, O.S., A.D. 1745,  
Aged 73.  
This stone was erected to his memory  
by his Grandson,  
THOMAS LORD ERSKINE,  
an Inhabitant of this Parish.”

for by the King to form a new Administration; and his Majesty, being told that Mr. Fox must be included in it, had the magnanimity to say, "I thought so, and I meant it so; he is a gentleman."<sup>r</sup>

The chief difficulty experienced was in disposing of the Great Seal. Lord Eldon, if he had been willing to retain it, could not possibly be allowed to sit in the new Cabinet, the overthrow of which, whether in or out of office, all foresaw that he would unscrupulously plot. The offer of it was made to Lord Ellenborough, who declined it, as he could not run the risk of the proposed exchange on account of his large family; and to Sir James Mansfield, Chief Justice of the Court of Common Pleas, who pleaded his advanced age. Lord Grenville and Mr. Fox then asked the King's permission to offer it to Mr. Erskine—when his Majesty exclaimed, "What! what! Well! well!—but, remember, he is your Chancellor, not mine." I am afraid that the royal objection arose from the recollection that he not only had always professed and acted upon Whig principles, but that by his eloquence he had defeated many prosecutions which his Majesty had deemed necessary for the public tranquillity. Had the King been aware (which could hardly be expected) of the professional qualifications necessary for a Chancellor, and this had been the source of his reluctance, he ought to be honoured for his discernment.

I must confess that the appointment was not justifiable—being prompted by political convenience, and not by a due regard to the administration of justice in the Court of Chancery. The mere circumstance of a barrister having practised chiefly in the courts of common law, I hold to be no disqualification for the office; and, on the contrary, I think he is likely to fill it more for the public benefit than a man reared in an equity draughtsman's office, who has never attended a circuit or quarter-sessions, and has exclusively employed his days and nights in drawing bills and answers, and conning over equity practice. If Erskine had been well versed in the civil law,—if he had scientifically studied general jurisprudence,—if he had been in the habit of pleading at the bar of the House of Lords,—and if he had been initiated in equity proceedings, by having been occasionally retained in great cases in the Court of Chancery,—he might have been expected to turn out as great an Equity

<sup>r</sup> On the authority of Lord Grenville, who related the anecdote to the late Earl of Essex.



Judge as Lord Eldon himself, who always ascribed his own proficiency to the circumstance that he began with the common law. But, unfortunately, Erskine was only a clever *nisi prius* pleader; and although he had sufficient acuteness to be made to understand any legal question, however abstruse, he was only familiar with the rules of evidence, and the points likely to occur in the conduct of a cause before a jury, or in the common routine of a King's Bench leader in banco. I doubt whether he had ever opened the Institutes of Justinian, or glanced at the codes of any of the continental nations; and he could hardly go so far as Lord Holt, who said, "I have been counsel in *one* equity suit, which I lost;" for in his time, the equity leaders having been well drilled in common law, the custom had not begun, which has become very usual since, of calling in upon important occasions the assistance of the common law leaders. Erskine, declining to accept briefs in the House of Lords, or before the Privy Council, had seldom to travel beyond the Term Reports and Buller's *Nisi Prius*. He could hardly have expected to be an adequate successor of Lord Nottingham, Lord Somers, and Lord Hardwicke; and if he had consulted his own comfort and his own glory he would have declined the offer, however tempting it might appear to vulgar men. Better would it have been for him to accept the office of Attorney-General, in the expectation that a common-law chiefship might become vacant, the duties of which he might have adequately performed; or to have been contented with being by far the first advocate who had ever practised at the English Bar—a position more enviable than that of an indifferent Chancellor, notwithstanding the precedence and the power which the Great Seal confers. In an evil hour he yielded to the temptation of "the pestiferous lump of metal" which has proved fatal to so many; and, ere long, from being the "beheld of all beholders," he sunk into comparative insignificance. He cannot be accused of having deserted his party, or ever done a dishonourable or mean act to obtain it. When Fox was Prime Minister, nothing could be more natural than that Erskine should be Chancellor. Politically, the arrangement was laudable; but, judicially, it was not to be defended. Romilly in his Diary, speaking of the new Administration, says, "There are some few appointments which have been received by the public with much dissatisfaction, and none

with more than that of Erskine to be Lord Chancellor. The truth undoubtedly is, that he is totally unfit for his situation. His practice has never led him into Courts of Equity; and the doctrines which prevail in them are to him almost like the law of a foreign country. It is true that he has a great deal of quickness, and is capable of much application; but, at his time of life, with the continual occupations which the duties of his office will give him, and the immense arrear of business left him by his tardy and doubting predecessor, it is quite impossible that he should find the means of making himself master of that extensive and complicated system of law which he will have to administer. He acts, indeed, very ingenuously on the subject; he feels his unfitness for the office, and seems almost overcome with the idea of the difficulties which he foresees that he will have to encounter. He called on me a few days ago, and told me that he should stand in great need of my assistance, that I must tell him what to read, and how best to fit himself for his situation. 'You must,' these are the very words he used to me, 'You must make me a Chancellor now, that I *may afterwards make you one.*'<sup>\*</sup>

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## CHAPTER CLXXXIV.

CONTINUATION OF THE LIFE OF LORD ERSKINE WHILE HE WAS LORD CHANCELLOR.

THE transfer of the Great Seal took place at the Queen's Palace on the 7th of February, 1806, when, being  
A.D. 1806. delivered up by Lord Eldon, his Majesty *multa gemens* put it into the hand of Erskine, declaring him Lord Chancellor of Great Britain, and directed him to be sworn of the Privy Council. The same day the new head of the law was created a Peer of the United Kingdom, by the title of Baron Erskine of Restormel Castle, in the county of Cornwall, this locality being designated as a mark of favour by the Heir Apparent, because it was the ancient residence of the Princes of Wales.

<sup>\*</sup> *Memoirs*, ii. 128.

The following day an honour was conferred upon him by which, I make no doubt, he was far more gratified. A meeting of the Bar was held in Westminster Hall, and, although a vast majority of those present were high Tories, the following resolution was carried unanimously :—

“That we cannot deny ourselves the satisfaction of presenting our sincere congratulations to the Rt. Hon<sup>ble</sup>. Thomas Lord Erskine on his appointment to the office of Lord High Chancellor of Great Britain, and of expressing the deep impression made upon us by the uniform kindness and attention which we have at all times experienced from him during his long and extensive practice amongst us ; and we farther beg leave to assure his Lordship that, in retiring from us, he is accompanied by our best wishes for his health and happiness.”

This being presented to him in the name of the Bar, by the two senior barristers, the following was his reply :—

“ GENTLEMEN,

“I cannot express what I felt upon receiving your address, and what I must ever feel upon the recollection of it. I came originally into the profession under great disadvantage. Bred in military life, a total stranger to the whole Bar, and not entitled to expect any favourable reception from similar habits or private friendships, my sudden advancement into great business before I could rank in study or in learning with others who were my seniors also, was calculated to have produced *in common minds* nothing but prejudice and disgust. How, then, can I look back without gratitude upon the unparalleled liberality and kindness which for seven-and-twenty years I uniformly experienced among you, and which alone, I feel a pride as well as a duty in acknowledging, enabled me to surmount many painful difficulties, and converted what would otherwise have been a condition of oppressive labour into an uninterrupted enjoyment of ease and satisfaction ? I am happy that your partiality has given me the occasion of putting upon record this just tribute to the character and honour of the English Bar. My only merit has been, that I was not insensible to so much goodness. The perpetual and irresistible impulses of mind, deeply affected by innumerable obligations, could not but produce that behaviour which you have so kindly and so publicly rewarded. I shall for ever remain,

“ Gentlemen,

“ Your affectionate and faithful humble servant,

“ ERSKINE.

“ Lincoln's Inn Fields, Feb. 9, 1806.” <sup>u</sup>

Considering how political enmities and private jealousies oppose such an expression of good-will to a barrister on his elevation to the woolsack, we need not wonder that this is a

<sup>u</sup> Annual Register, 1806, p. 363.

solitary instance of it in the annals of our profession; and we may form some conception of the fascinating manners and real kindness of heart, as well as of the brilliant genius, which called it forth.

I must, however, relate that he caused a good deal of merriment in Westminster Hall by the heraldic honours which, on his own suggestion, were accorded to him. Retaining his family shield and crest, he took for supporters "a Griffin, wings elevated, gules, charged with a mullet, and a Heron, wings mounted, holding in the beak an eel proper," (on which many jokes were made):\* and he took for his motto, "TRIAL BY JURY." That of his father being "JUDGE NOUGHT," all allowed that it would not have been very appropriate; but it was said that "BY BILL IN EQUITY" would have been a better substitution on his going into the Court of Chancery, and that "Trial by Jury" was a vain imitation of Lord Camden's motto from Magna Charta, "Judicium Parium, aut Lex Terræ."†

He took his seat on the woolsack on the 10th of February,\* and on the last day of Hilary Term Lord Chancellor Erskine, seated in a state carriage, adorned with this blazonry, rode in grand procession from his house in Lincoln's Inn Fields to Westminster Hall, accompanied by his Royal Highness the Duke of Clarence, afterwards William IV., many peers and privy councillors, and all the Judges and King's counsel. The oaths were administered to him with due solemnity, and he commenced his judicial career.†

\* The Buchan supporters were two ostriches.

† Soon after, a barrieter whom I knew well, setting up his carriage,—in still worse taste put upon the panels, "Causes produce Effects,"—equal to the tobacconist's "Quid rides," or the water-doctor's ducks crying *Quack! quack!*

\* The following is the copy from the Lords' Journals on his taking his seat as a peer:—

"10th Feb. 1806.—His Royal Highness the Duke of Clarence acquainted the House 'That his Majesty had been pleased to create the Right Honourable Thomas Erskine, Lord Chancellor of that part of the United Kingdom of Great Britain and Ireland called Great Britain, a Peer of these realms.

"Whereupon his Lordship, taking in hand the purse with the Great Seal, retired to the lower end of the House, and having there put

on his robes, was introduced between the Lord Holland and the Lord Rawdon (also in their robes), the Yeoman Usher of the Black Rod, Garter King at Arms, and the Earl Marshal preceding.

"His Lordship laid down his patent upon the chair of state, kneeling; and from thence took and delivered it to the clerk, who read the same at the table.

"Then his Lordship at the table took the oaths, and made and subscribed the declaration; and also took and subscribed the oath of abjuration, pursuant to the statutes.

"Which done, his Lordship took his seat at the lower end of the Barons' Bench; from whence he went to the upper end of the Earls' bench, and sat there as Lord Chancellor, and then returned to the woolsack."

\* "12th February, 1806.—John Lord Eldon, Lord High Chancellor of that part of the United Kingdom of Great Britain and Ireland

The Equity Counsel behaved to him with much liberality. He had been in the constant habit of jeering, although in a good-natured way, at their complicated and interminable proceedings, which he contrasted with the simplicity and despatch of the Common Law. They had been often taunted in society with his pathetic appeal to Lord Kenyon, who recommended that his client should apply to Chancery for relief,—“Would your Lordship send a dog you loved there?”<sup>b</sup> and the answer was handed about which he had lately given to a question connected with equity: “My opinion is, that the present case should be sent to some gentleman conversant with this branch of practice.” Yet they not only behaved to him with much respect and courtesy, but abstained from seeking to derive any unfair advantage from his inexperience, and showed a general disposition to keep him out of “*scrapes*.” His demeanour in his new office, to all who approached him, was so noble and so benevolent, that it conquered all prejudices, repressed the natural ebullitions of envy and of selfishness, and created an emulation of reciprocal good feeling. He continued all the officers of his predecessor in their situations; he did not dismiss one commissioner of bankrupts;<sup>c</sup> and as, by a combination of independence and deference, he had been a model of what is due to the Court from an advocate, he now, by his uniform patience, impartiality, firmness, and politeness, showed what is due from a Judge to the Bar. As to higher qualifications, he was not only

called Great Britain, having delivered the Great Seal to the King at the Queen's Palace on Friday, the 7th day of February, 1806, his Majesty the same day delivered it to the Honourable Thomas Erskine, with the title of Lord High Chancellor of Great Britain, who was then sworn into the said office before his Majesty in Council; and on Wednesday, the 12th day of February, 1806, being the last day of Hilary Term, he went in state from his house in Lincoln's Inn Fields to Westminster Hall, accompanied by the Judges, King's Serjeants, King's Counsel, and several other persons. The Lord Chancellor proceeded into the Court of Chancery, where, before he entered upon business, in the presence of his Royal Highness the Duke of Clarence and several other peers, he took the oaths of allegiance and supremacy, and the oath of Chancellor, the same being administered by the Deputy Clerk of the Crown, his Honour the Master of the Rolls holding the

book, and three other Masters being present; which being done, the Attorney-General moved that it might be recorded. Then his Royal Highness and the other Lords departed, leaving the Lord Chancellor in court.<sup>b</sup>  
—*Min. Book*, No. 2, fol. 80.

<sup>b</sup> The proper pendant to this sarcasm is the advice given to send a dog that could not be confined at home, and went astray doing mischief, into the Court of Chancery, “for no living thing once there can ever get out again.”

<sup>c</sup> This was in the time of the “Septuagint,” or Seventy Commissioners, who were all removable at pleasure. I was then a student of law, and having had a promise of a commissionership from the new Chancellor in respect of his friendship for my father, felt disappointed, like other expectants, that there was not a “*scratch*”—or turning out of those who were wealthy and inefficient.

above all suspicion of corruption, but most devotedly anxious that full justice should be done to all the suitors who came before him; and while he sat in court, notwithstanding his love of desultory amusement, he rigidly confined his attention to the business in hand, however irksome it might be, and however dull and boring the counsel who treated it. There lie before me many quarto volumes of notes which he took during his short tenure of office, proving that he had assiduously listened to, and laboured to understand, all who addressed him,—there being as large a space allotted to the plodding draughtsmen as to Romilly and Perceval. I expected to extract some amusement from the mass; but, to my disappointment and his credit, I cannot discover a single humorous sally in the whole series of his note-taking labours. When a sixth counsel was creeping over the oft-trodden ground, still he had not relieved the tedium he must have felt by penning an epigram, or drawing a caricature, in the margin of his note-book.

Further, he was not only very quick, but very cautious; and he had the discretion, on most occasions, to say little, notwithstanding his general love of talking—recollecting, that although his judgment might be right, there was serious danger of his reasons being wrong.

But here my commendation of him as a Judge must cease. Well aware of his own deficiency in the professional knowledge requisite for the satisfactory discharge of his duty, he took no pains to supply it; and the examples of Lord Nottingham and Lord Hardwicke, who, though far better prepared, had entered on a laborious course of study when they received the Great Seal, were unknown to him, or neglected by him. Being entirely unacquainted with the law of real property, which is so peculiarly essential in a Court of Equity, he did purchase a copy of the most popular Digest upon this subject; and being caught with a volume of it under his arm, he said “he was taking a little from his *Cruise* daily, without any prospect of coming to the end of it.” But I cannot find that he made any systematic or vigorous effort to initiate himself in the doctrines of equity; and, on the contrary, I have been told that, finding he got on more smoothly in the Court of Chancery than he expected, he undervalued the difficulties of his situation, and was not much dissatisfied with his own qualifications and his own performances. Gratifying Hargrave with a silk gown, he got this deep though dull

lawyer to work out the authorities for him; and, with such assistance, he thought himself equal to most of his predecessors.

He had to boast that "there was only one of his decrees appealed against, and this was affirmed." From the <sup>A.D. 1806—</sup>peculiar nature of the jurisdiction of the Court of <sup>1807.</sup> Chancery, however, the test of appeals and reversals very inadequately tries the merits of a Chancellor. A court of appeal is very reluctant to take a different view of facts from the judge below; and in the course of an equity suit, there is often a difficulty in raising a question of law so distinctly as that it may be submitted to a superior tribunal. However erroneous the vulgar notion that an Equity judge may do what he likes according to his own notions of natural justice, there is often much left to his discretion, and his decree is not to be altered unless it be erroneous. Had Lord Erskine presided only the same length of time in the Court of King's Bench as in the Court of Chancery, although he certainly would have done his work infinitely better, there probably would have been many writs of error from his judgments, and some of them would have been reversed.

The decisions "Tempore Erskine" are to be found in the 12th and 13th volumes of the Reports of Vesey, junior. I believe that but little bad doctrine is to be found in them; yet although they are not to be "*tabooed*," or denominated the "APOCRYPHA," as some coxcombical Equity practitioners have proposed, it must be admitted that, generally speaking, there is a striking tenuity about them; that if they do not do injustice to the parties, they lay down few useful rules; and that, if they do not disturb, they do little to advance, our equitable code. In the whole series of them I do not think that there is once any allusion to the civil law or foreign jurists; and the illustrations are drawn from *NISI PRIUS* more frequently than from the general principles established by the successive occupiers of the "MARBLE CHAIR." Luckily for the public, the office of Master of the Rolls was at this time held by Sir William Grant, who comes up to the highest notion that can be formed of judicial excellence.

I will try to select a few of Lord Erskine's decisions which are most likely to interest the general reader.

In *Matthewson v. Stockdale*,<sup>d</sup> the question arose, whether there was a copyright in a compilation entitled "East India Calendar

or Directory," objection being made that it afforded no scope for a display of literary merit, and that the same materials were open to all mankind :—

*Lord Chancellor* : " In the case of Dr. Trusler's *Chronology*, all the remarkable events, the accounts of eminent persons, every matter of curiosity and interest, were subjects of information past and gone by,—which could not be altered. All human events are equally open to all who wish to write an original work. No man can monopolise such a subject. Therefore Dr. Trusler would have had no right to complain of another who employed his mind in a new compilation, endeavouring to make additions and improvements. But it was stated by the Court, that if the defendant's work was a copy from the other, with alterations merely colourable, Dr. Trusler was entitled to a verdict; and finally he obtained a decision in his favour. Then came the case of a map of St. Domingo, attached to the work of the late Mr. Bryan Edwards. The defendant said, 'How can there be copyright in a map of the Island of St. Domingo? Must not the mountains have the same position—the rivers the same course? Must not the points of land—the coast connecting them—the names of places—everything constituting a map, be the same in every map which is accurate?' The answer was, that the subject of the plaintiff's claim was a map made at great expense, from actual surveys—distinguished from former maps by improvements which were manifest; while the defendant's map was a servile imitation of it, requiring no ingenuity or expense beyond engraving on a plate of copper a copy of the original.—When I was at the Bar, I unsuccessfully resisted an action for pirating a chart of the English Channel—urging that the latitude and longitude of the several points on the adjoining shore, and the soundings, must be in all charts as they are fixed by nature. So Cary, the author of the 'Road Book,' succeeded against Patterson's imitation of it, which was shown to have extended to its blunders,—the beautiful place in the Isle of Wight called *the Priory* being stated by the defendant, as well as by the plaintiff, to belong to Mr. Justice Gro, instead of Mr. Justice GROSE. There is no copyright in the title of 'East India Calendar;' but if a man, by considerable expense and labour, has procured all the names and appointments on the Indian Establishment, he has a copyright in that individual work. I have compared these books, and find that, in a long list of casualties, removals, and appointments, there is not the least variation even as to situation in the page. Upon such evidence, in a court of law, there would hardly be anything to try; and though I do not approve extending copyright too far, I am bound, under these circumstances, to continue the injunction to the hearing."

In *Sanders v. Pope*, he granted relief against the forfeiture of a lease for breach of a covenant to lay out a specific sum in repairs in a given time, where compensation can be made to the landlord :—



"There is no branch of the jurisdiction of this Court more delicate," said he, "than that which goes to restrain the exercise of a legal right. That jurisdiction rests only upon this principle,—that one party is taking advantage of a forfeiture; and as a rigid exercise of the legal right would produce a hardship, while the other party may have the full benefit of the contract as originally framed, the Court will interfere. In the common case of a covenant in a lease to pay rent—with a clause of forfeiture for non-payment, equity is in the constant course of relieving the tenant, the rent and all expenses being paid, although the failure to pay at the day did not arise from accident or disease. I think the case rests on the same principle, for the landlord may be placed in the same situation as if the covenant had been strictly performed."\*

In *White v. Wilson*, he laid down the law very distinctly upon the delicate and difficult subject of incapacity to make a will by reason of insanity. An issue having been directed to try the validity of the will of Lord Chedworth, it appeared that for many years he had acted as Chairman of Quarter Sessions, and had attended and voted in the House of Lords—although there were some suspicions as to his sanity, from the eccentricity of his manner and singularity of his dress. The jury found for the will; but a motion was made for a new trial upon an affidavit of Dr. Parr, expressing his opinion that the testator had never been of perfectly sound mind. On the other side, several letters from Dr. Parr to the testator were produced, consulting his Lordship on subjects of literature, expressing in strong terms an opinion of his taste and talents, and, in one instance, recommending a clergyman for a living in his Lordship's gift:—

*The Lord Chancellor*: "The rule upon this subject I take to be, that where the party has been subject to a commission, or to any restraint permitted by law, even a domestic restraint, clearly and plainly imposed upon him in consequence of undisputed insanity, the proof is thrown upon the side which maintains his sanity. On the other hand, where insanity has not been imputed by relations or friends, or even by common fame, the proof of insanity is thrown upon the other side—and it is not to be made out by rambling through the whole life of the party, but must be applied to the particular date of the transaction. A deviation from that rule will produce great uncertainty. In such a case as this, therefore, it must be shown that a man exercising all these great public duties, which it was proved this testator did exercise, had nevertheless a morbid image in his mind upon a particular subject, wide from sound understanding and clear reason. In my experience I know only

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\* 12 Ves. 289. This judgment, however, has been much questioned. See 10 Ves. 701  
12 Ib. 334.

one instance of a verdict of lunacy under such circumstances—that of Mr. Greenwood, who was bred to the bar, and, like Lord Chedworth, acted as chairman at the Quarter Sessions, but, becoming diseased, and receiving in a fever a draught from the hand of his brother, the delirium connected itself with that idea, and he considered his brother as having given him a potion with a view to destroy him. He recovered in all other respects; but that morbid image never departed, and that idea appeared connected with the will by which he disinherited his brother. Nevertheless, it was considered so necessary to have some precise rule, that though a verdict had been obtained in the Court of Common Pleas against the will, the Judge strongly advised the jury to find the other way, and they did accordingly find in favour of the will. Further proceedings took place afterwards, and concluded in a compromise. But is this case of that sort? Is there any evidence of a morbid image in the mind of this testator, connected with his will, or at any other period? Dr. Parr, when he speaks of specific facts, is obliged to go back to the time when they were boys together at Harrow, and appears afterwards to have had a high opinion of his discrimination and good sense.” *A new trial was refused.*<sup>f</sup>

In the case of *Exparte Cranmer*, he made several other striking observations on the law of lunacy, which he had much considered. Under a commission to inquire whether Henry Cranmer, Esq., was a lunatic? the jury found “that he is so far debilitated in his mind as to be incapable of the general management of his affairs,” the fact being that his faculties were in a state of great decay from old age:—

*Lord Chancellor*: “There ought to be an Act of Parliament to authorise the Chancellor to deal with a case of this kind in a different fashion. Unless the party be expressly declared to be a lunatic, or of unsound mind, I have no jurisdiction; but I feel, as Lord Eldon seems to have felt, that persons who are above all others entitled to protection ought not to go unprotected. A man may have passed a useful and illustrious life, and, by the course of nature, his faculties may decay, so that he may not be fit either to govern himself or his affairs; it is unseemly that he should be put upon the footing of a lunatic, and that, in the ordinary course, a commission should issue against him, which in after times may affect the fortunes of his posterity. He ought to have the guardianship of the Court in his second infancy as he had in his first. If it falls to the King, by his prerogative, to take care of those who cannot take care of themselves, and I have jurisdiction,—at all events there must be a congruity between the commission and the finding. The verdict must either be in the words of the commission, or in equipollent words. The jury cannot find a special verdict referring the question to the Court, and saying, ‘Whether he be a lunatic or not

we cannot tell, but we refer it upon the evidence to the Court.' I have no authority to act upon his liberty or his property except under a legal verdict. I make no doubt that I have jurisdiction in a case like this, if the proceedings are regular. Lord Coke considers the word 'lunaticus' as by no means material, only classing it with 'amens,' 'demens,' &c., and there is no doubt that the moon has no influence over lunatics."<sup>§</sup> *The commission was quashed, with directions that another commission should issue.*<sup>h</sup>

Soon after, a case came before him which excited great public interest, and of which we have the following account from Sir Samuel Romilly; strongly characteristic both of the judge and the reporter:—

"A bill was filed some time ago by a lady of the name of Purcell against John M'Namara, to set aside several deeds conveying to him a moiety which she was entitled to of a very valuable estate in the island of Tortola, as having been obtained from her by advantage taken of her ignorance, and an abuse of the confidence she had reposed in him. The cause was heard by Lord Eldon when Chancellor, and he decreed that all the deeds should be delivered up by M'Namara to be cancelled, and that he should pay the costs of the suit. As soon as the present Chancellor succeeded to the Great Seal, M'Namara petitioned to have the cause reheard. It seems that he had in early life been an acquaintance of the Chancellor's; and he had the folly to boast that he should certainly obtain a reversal of the decree, and to invite his friends to come and witness his triumph. The Chancellor, not choosing to trust himself with the sole decision of the cause, or thinking that there might be considerable difficulty in the case, desired the Master of the Rolls to assist him. During the first two or three days of the cause being reheard, the Chancellor, with great rashness, expressed a very strong opinion that the decree could not be supported. The Master of the Rolls, after his usual manner, remained perfectly silent. In truth, the Lord Chancellor did not, at the time he discovered his opinion, at all understand the cause, nor had he then heard of some of the most important facts in it; for M'Namara's counsel began, and, as might be supposed, did not open a very strong case against their own client. When he had heard the counsel for Miss Purcell, and talked with the Master of the Rolls upon the case, he became sensible that it was impossible to reverse or even to alter the decree. In truth it was a very gross case, in which M'Namara, under pretence of rendering service to the plaintiff, her brother and her sister, had obtained from them a conveyance of every thing they were possessed of, and had reduced them to

<sup>§</sup> Vesey, jun., represents this as a *point of law* decided by Lord Erskine; and puts in the margin of his report, "In cases of lunacy, the notion that the moon has an influence is erroneous." To complete the *ridicule* at

which, were it not for his simplicity, one would suppose that he had maliciously aimed, he put in his index, "LUNATIC, see LORD CHANCELLOR."

<sup>h</sup> 12 Vesey, jun. 445—457.

subsist upon small annuities received from himself, and for which he compelled the plaintiff to sign receipts, acknowledging that she had no right to her annuity, but owed it to his generosity and charity. The decree was affirmed."<sup>1</sup>

Lord Chancellor Erskine's judgment is not given by Vesey, but there is a copy of it extant, which shows that he at last was complete master of the case, and that he was very anxious to decide it justly. Thus he began :

"I had not, I believe, sat here quite a week, when a petition was presented to me to re-hear this most important cause. And when I recollected that it had been heard at great length—that it had been pleaded by counsel of eminence who are not now at the Bar, having been since raised by his Majesty's favour to seats on the benches of justice—that the decree under review was pronounced by a noble and learned lord who had spent the greatest part of his professional life in the practice of this Court, and presided in it for several years with so much reputation,—and when I considered the example of those who have adorned the place which I now fill, I thought it highly incumbent on me to pursue that course, of asking the assistance of his Honour the Master of the Rolls, to which I am entitled by the jurisdiction and constitution of this Court on difficult and complicated points, in the same manner as, when any question of law mixes in the consideration of any subject before the Court, I am entitled to the assistance of the learned Judges. In the present case, I have another reason for pursuing this course. I have had occasion more than once to remark that, consistently with the habits of English life and manners, a Judge who is to administer justice cannot be always a stranger to the contesting parties; and whenever the decisions of the Courts of Common Law respect facts, this consideration renders the trial by jury of such inestimable value. Of the plaintiff in this cause I know nothing. From the evidence, she appears to be a woman friendless and unprotected. She was a total stranger to me till this cause presented itself in court. With the defendant, it is quite otherwise; I have known him all my life; I have a particular acquaintance with him, and certainly I have always had great good-will towards him: and therefore, though I have that confidence in myself which it may be indecent to express, and though my judgment was not likely to be surprised, yet, as it might have turned out that it might be my duty to reverse that decree,—not from any thing personal to myself, but that

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<sup>1</sup> Life of Sir S. Romilly, li. 166. During the argument at the Bar, Mr. M'Namara sent a challenge to Sir Samuel, who very properly declined it, for he had strictly confined himself within the discharge of his professional duty. "M'Namara," says Romilly, "who had been concerned in the course of his life in several duels, had vainly attempted

during the hearing of the cause to intimidate Miss Purcell's counsel from doing their duty. Some years afterwards, having recovered from a very dangerous illness, he wrote a letter to a friend of mine, in which, after telling him how near dying he had been, he added, 'but I was prepared to meet the event like a man of honour.'"

the character of English justice might stand pure and unsuspected, I wished to be assisted, as I have been, and I return my thanks to the Master of the Rolls for the learned opinion which he has delivered. But, greatly as I am bound to respect his Honour, if I had not agreed with him, I should have paused, and taken time to consider; for the judgment must be mine, and I am responsible for the justice or injustice of it."

He then entered very elaborately into the evidence, and came to the clear conclusion that the deeds were fraudulent, and must be set aside. The following day there appeared in the newspapers a report of the case, furnished by M'Namara, misrepresenting the facts, the arguments of counsel, and the judgment of the Court—representing the suit to have originated in a shameful conspiracy between the plaintiff, her attorney, and a discarded steward of the defendant, to destroy his character.

"So scandalous an attempt on the part of M'Namara," wrote Sir Samuel Romilly in his Diary, "to impose on the public, to convert the proceedings of a court of justice into a vehicle of calumny, and to draw down the infamy which belonged to himself upon the heads of his victims, called for the severest animadversion; and, as counsel for Miss Purcell, I moved the Court that M'Namara, and the person whom he had employed and paid to draw up the account, should be committed for a contempt of the Court. I represented to the Chancellor, in the strongest way that I could, the hard situation in which the suitors, witnesses, and solicitors in his Court must be placed, if he could not protect them against such libels. I pressed him to consider how much the preservation of the liberty of the press depended upon not suffering such an abuse to pass unpunished. I represented to him how much the offence was aggravated by the condition of the parties, who did not now even pretend that the account published was meant to be accurate; who attempted no apology, expressed no contrition, offered no atonement; but, already anticipating, as it were, their triumph over the Court, contended that they had done no more than they had a right to do; and pretty clearly intimated that they were ready to misrepresent the future proceedings of the Court, just as they had misrepresented the past. I called upon him to assert the honour of his situation; and I ventured to tell him that, although he would probably be disposed to disregard an indignity offered to himself, he should consider how much others, how much all his Majesty's subjects, were interested in his maintaining the respect due to the High Court in which he presided. I added, that as there could be no doubt that his office had become more honourable and dignified in passing through the hands of the Somerses, the Talbots, the Hardwickses, the Camdens, and his other illustrious predecessors, so it would be transmitted by him undiminished in splendour and dignity to his successor. When I concluded, the Chancellor immediately

delivered his opinion. The Court was extremely crowded, for a good deal of interest and curiosity had been excited to see how he would conduct himself. He said that there could not be any doubt of the authority of the Court to commit in such a case; that the fact of M'Namara being the publisher was clearly established, and the article was a gross misstatement of the proceedings of the Court, and was manifestly printed for the purpose of exculpating the defendant in the public opinion, and of rendering odious his opponents. After dilating on these topics at considerable length, and raising an universal expectation of the only decision which it was supposed possible could follow such a speech, he added, that, 'though this was certainly a case in which the Court might commit the offenders as for a contempt, it still remained to be considered whether, in the exercise of the discretion which the Court must necessarily have in such a case, it ought to do so, and that, exercising that discretion, he would certainly *not* commit them.'

Romilly goes on to state, that a proposal being made that the papers should be laid before the Attorney-General, with a view to a prosecution for a libel, Lord Erskine sent for Miss Purcell's solicitor, to discourage any such proceeding, and adds, "This conduct of the Chancellor, to a person not well acquainted with his character, must seem incomprehensible; for myself I have no doubt that it has not proceeded from regard to M'Namara, but merely from the fear of losing or endangering that vulgar popularity which he values a great deal too highly." But he brings forward a serious charge of inconsistency against Lord Erskine:—"The Chancellor was so sensible of the loss of reputation which he has sustained by this, that about ten days after, upon a complaint against a man and his wife for a publication relative to the proceedings of the Court in a lunacy, he immediately committed them and their printer to the Fleet, although the case was much less flagrant than that of M'Namara.<sup>k</sup> This was *Ex parte Jones*,<sup>m</sup> where, pending a petition to remove the committee of a lunatic, an application was made against the committee and his wife and other persons, as the authors, printers, and publishers of a pamphlet on lunacy, with a dedication to the Lord Chancellor reflecting on the conduct of the petitioners:—

*Lord Chancellor*: "As to remedy at law, the subject of this application is not the libel against the petitioners. Whatever may be said as to a constructive contempt through the medium of a libel against persons engaged in controversy in the Court, it never has been or can be denied that a publication, not only with an obvious tendency, but with

<sup>k</sup> Life of Romilly, ii. 172.

<sup>m</sup> 13 Ver. 237.

the design to obstruct the ordinary course of justice, is a very high contempt. Lord Hardwicke considered persons concerned in the business of the Court as being under the protection of the Court. But, without considering whether this is or is not a libel upon the petitioners, what excuse can be alleged for the whole tenor of this book? Stripped of the dedication, it could be published with no other intention than to obstruct the course of justice, and to bring into contempt the orders which the Court has made. But in the dedication the object is avowed to influence the decision of the Court in the particular case, to obtain a decision contrary to the established rules of the Court, and, by flattering the Judge, to taint the source of justice. Let the committee and his wife and the printer be committed to the Fleet prison."<sup>a</sup>

Notwithstanding the harsh observation of Romilly, I am not at all clear that the two decisions may not be reconciled, as the publication in the former case might be considered only a libel on individuals, and in the latter case it was a direct obstruction to the administration of justice.

There is at present a disposition to attempt to do away all distinction between the transfer of real and personal property, in forgetfulness of the essential difference between the two which ought ever to be had in remembrance. This is well expressed by Lord Chancellor Erskine in the case of *Hiern v. Mill*,<sup>o</sup> on the effect of notice of a prior incumbrance to a purchaser:—

“The law distinguishes between a real estate and a personal chattel. The latter is held by possession,—a real estate by title. Possession of a real estate is not even *prima facie* evidence of title; it may be by lease or at will, or by sufferance; and real property cannot answer the purposes of society, unless various interests may be carved out of it, which can only be evidenced by writing.”<sup>p</sup>

The great boast of Lord Erskine's Chancellorship was his decision in *Thelluson v. Woodford*. The famous will of Peter Isaac Thelluson contained this clause:—“In case I shall in my lifetime enter into any contracts for the purchase of any lands, and I shall happen to die before the necessary conveyances thereof are executed, I order and direct that all such contracts so entered into by me shall be completed and carried into execution by my said trustees after my death, and that the purchase monies shall be paid by them by, with, and out

<sup>a</sup> 13 Ves. 240.

<sup>o</sup> Ib. 119.

<sup>p</sup> Possession never can be the evidence of

title to real estate; but I hope that, before long, no deeds affecting real estate will have any validity unless they be registered.

of my personal estate, and that the conveyances thereto shall be made to them, their heirs and assigns, and that they shall be seised and possessed of the premises so to be conveyed on the same trusts as are by this my will created concerning the estates directed to be purchased in manner aforesaid." The testator, after making his will, and within a month before his death, had contracted for the purchase of real estates to the amount of 30,000*l*. These estates, as the law then stood, could not pass by the will, and vested in the heir at law; but the trustees contended that, according to the doctrine of "*election*," he must renounce all benefit under the will, or let the devise take effect:—

*Lord Chancellor*: "I give the judgment which I find myself bound to pronounce, with some reluctance,—considering this will as dictated by feelings not altogether consistent with convenience. But this appears to me to be a case of *election*. The jurisdiction exercised by this Court compelling election, may be thus described:—'A person shall not claim an interest under an instrument, without giving full effect to that instrument as far as he can.' If, therefore, a testator intending to dispose of his property, and making all his arrangements, under the impression that he has the power to dispose of every thing made the subject of his will, mixes in his disposition property that belongs to another person, or property as to which another person has a right to defeat his disposition, giving to that person an interest by his will,—that person shall not be permitted to defeat the disposition, and yet take under the will. The reason is, the implied condition that he shall not take both, and the consequence is, that there must be an *election*; for though the mistake of the testator cannot affect the property of another, yet devisee shall not take the testator's property unless in the manner intended by the testator. But it is said that the testator here laboured under a mistake, and *non constat* what he would have done had he been aware of the true state of the circumstances. The best answer to such reasoning was given by Lord Alvanley in the case of *Whistler v. Webster*,—that no man shall claim a benefit under a will unless he confirms as far as he is able, and gives effect to every thing contained in it, without reference to the consideration whether the testator had any knowledge of the extent of his power or not. Nothing can be more dangerous than to speculate on what he would have done if he had known one thing or another. It is enough to say that he has manifested the intention that the property over which he professes to exercise a testamentary power, should go in such a manner. Whether he thought he had the right, or, knowing the extent of his authority, intended to exceed it, is immaterial." After reviewing the prior decisions he said:—"It cannot be argued that the rule does not reach an heir at law. Lord Hardwicke would not put the case of an heir at law by way of illustration, if the heir could not under any circum-



stances be put to election. Mr. Thelluson's heir takes these estates as if his father had not made a will; but my opinion is, that he cannot also take what is given to him by the will. He must therefore *elect*. There was an appeal against this decree, but it was affirmed by the House of Lords.<sup>2</sup>

With questions of evidence our Chancellor was very familiar, and it was a great comfort to him when they came before him. In a pedigree cause a new trial was applied for on the ground, 1st, That hearsay evidence of a husband as to the legitimacy of his wife had been rejected because he was not her relation by blood; and 2ndly, That a forged register had been produced by the party who had gained the verdict:—

*Lord Chancellor*: "First. Consider whether the knowledge of the husband, as to the legitimacy of his wife, is not likely to be more intimate than that of any relation, however near in blood. He has every motive to inquire into the fact, with the means of ascertaining it. If she is entitled to any freehold estate of inheritance, he is tenant by the curtesy. So, as to personal estate, he is entitled to all that comes to her. The honour of the husband and the family are connected with her pedigree, and the subject must often be discussed between them. How much or how little weight the evidence ought to have, will be the subject of consideration for the jury. Here we are to consider, whether it ought to be admitted or not; and upon that point I think there must be a new trial. Secondly. I likewise think, that there ought to have been a new trial on the ground of the forged register, although, giving faith to the rest of the evidence of the party who obtained the verdict, his case might be established without it. I do not say that the forgery was necessarily fatal—but sufficient weight was not given to it. Two conflicting decisions have occurred upon this subject in the House of Lords. In the *Douglas cause*, every branch of the written evidence that went to prove the descent of Lady Jane Douglas was known to be manufactured by Sir John Stewart, who, having neglected to secure evidence of birth, had recourse to those 'feigned letters,' as they were called, in support of his son's legitimacy, and that was considered, both by Lord Mansfield and Lord Camden, as not throwing any obstacle in the way. But in the more recent case of *Lord Valentia*, although his father and mother, before and at the time of his birth, had lived together as man and wife, and his father had often declared that he was married to the mother, and that the claimant was the legitimate son of that marriage, a forged certificate of marriage having been given in evidence, Lord Mansfield said, 'Truth does not require the aid of forgery; if the marriage was real, they might have relied upon the evidence belonging to it;' and judgment was given

against Lord Valentia.\* These two cases stand in opposition to each other. A rule is not to be laid down either way, but every case must depend upon its own circumstances.”†

I will mention only one other decision of Lord Erskine in the Court of Chancery, which he pronounced the day he gave up the Great Seal. The House of Lords, according to many precedents, having made an order, “That the Lord Chancellor should give orders for the printing and publishing the trial of Lord Melville, and the several questions put to the Judges, with their answers thereto, and that no other person should presume to print or publish the same,” the Lord Chancellor appointed Mr. Gurney, the famous shorthand writer, who, with his assistants, had taken down the whole in short-hand, and was preparing to publish it—when the defendant advertised another report of the same trial and proceedings; a bill was filed, and a motion made for an injunction:—

*Lord Chancellor:* “Notwithstanding the high authority of the House of Lords, the copyright existing by my order under the direction of the House, I should not have been justified in granting the injunction without hearing the defendant, and I feel so forcibly the arguments that have been pressed for him, that if the case of *Bathurst v. Kearsley* had not been produced, which cannot be distinguished from this, I should not have been disposed to grant the injunction in the first instance, as it is not sufficient that privileges, however high, have been exercised, unless they have been judicially recognised. I shall therefore follow the example of Lord Eldon in the case of *Bruce v. Bruce*, upon a dispute between the King’s printers in this country and in Scotland, great consideration being necessary to arrive at a right judgment between their contending patents. When I then pressed him with the argument, that injunctions proceeding upon legal rights ought to have their foundation in legal title, receiving consummation by legal judgment, he answered, that the same question had been decided by Sir Joseph Jekyll, and his decree affirmed by the Lord Chancellor, and that the Court granting the injunction till the hearing did not decide ultimately upon the rights of the parties. I feel so much the detriment to the defendant from an injunction upon a publication of this temporary nature, calculated merely for the gratification of present curiosity, that unless I had a strong impression that at the hearing I should continue of the same opinion, and decree a perpetual injunction, I should not grant the injunction now. The facts are all admitted, and the question rests on the mere right of the plaintiff to a monopoly of this subject. This case turns on the authority of the Lords

\* However, he was held legitimate by the House of Lords in Ireland.

† See *Vowles v. Young*, 13 Ves. 140—148.

to exercise the privilege of appointing a person with exclusive power to print and publish their proceedings. The privilege has been uniformly asserted by the Lords, and it is confirmed by Lord Hardwicke and Lord Northington. The case of *Bathurst v. Kearsley* had a favourable circumstance for the defendant, which the present wants. There, the House of Lords had permitted the Duchess of Kingston to employ a person to take notes on her behalf; she delivered the notes to the counsel to be corrected, and afterwards sent them so corrected to the defendant, with directions to publish them for her protection. The present defendant does not claim under Lord Melville, but stands upon the liberty of every individual to publish an account of this trial. The trial of Dr. Sacheverell was published by the same authority which the plaintiff has obtained; and there are many other instances of which I have selected a few, not only on articles of impeachment by the House of Commons, but also in trials for felony and treason." He then went through Lord Winton's trial, Lord Oxford's, Lord Lovat's, Lord Ferrers's, the Duchess of Kingston's, and Mr. Hastings's. He added, "I do not proceed on any thing like literary property, but upon this only, that the plaintiff is in the same situation as to this particular subject. At the hearing it is possible that a different view may be taken of the case. In *Miller v. Taylor* it appeared that the Crown had been in the constant course of granting the right of printing Almanacks; and at last King James II. granted that right to the Stationers' Company and the two Universities; for a century they kept up that monopoly by prosecutions; at length Carnan, an obstinate man, insisted on printing an almanack of his own. An injunction was applied for to the Court of Exchequer, and granted till the hearing: but at the hearing, that Court, sitting in equity, directed the question to be put to the Court of Common Pleas, whether the King had power to grant the exclusive right of printing and publishing Almanacks? After the case had been twice argued, the Court of Common Pleas returned for answer that the grant was void. The injunction was accordingly dissolved, and the House of Commons threw out a bill introduced for the purpose of continuing the monopoly."

It is impossible, with any justice, to praise Erskine as a magistrate, while we view him presiding in the Court of Chancery; but, luckily for his judicial fame,—while he held the Great Seal, the impeachment of Lord Melville, which had been voted in the lifetime of Mr. Pitt, came to be tried before the House of Peers. Mr. Hastings's trial had brought this mode of proceeding against state offenders into much disrepute, and to Erskine belongs the merit of proving that it may still be so conducted as to prove an efficient safeguard of the Constitution. Instead of the House sitting to hear the case a few days in a year, and when sitting being converted

from a Court of Justice into a theatre for rhetorical display, he insisted that it should sit, like every other criminal tribunal, *de die in diem*, till the verdict was delivered; and he enforced, both upon the managers of the House of Commons, and on the counsel for the defendant, the wholesome rules of procedure established for the detection of crime and the protection of innocence. During the fourteen days the trial lasted, his demeanour on the woolsack excited universal admiration for dignity, for courtesy, for impartiality, for firmness, and for discrimination. His *nisi prius* experience was now of infinite service to him, and he was able in a few minutes satisfactorily to decide questions of evidence which might have consumed whole days in arguments and in references to the Judges, and in processions from Westminster Hall to the Chamber of Parliament, and from the Chamber of Parliament to Westminster Hall. Entire deference was properly shown to his opinion respecting the mode of examining the witnesses and the admissibility of written documents, and without any intrusive interference, not unfrequently by a question which he put, or a suggestion which he offered, he materially assisted both the prosecution and the defence. As the evidence turned very much on matters of account, it is difficult to convey any idea of the points which were ruled; but as a specimen I will mention the decision upon the question, whether the contents of a book kept in an iron chest in the Pay Office could be read against Lord Melville,—Mr. Whitbread, Sir S. Romilly, and Serjeant Best contending for the Commons, that he must be presumed to be cognizant of them, and his counsel, Mr. Plumer and Mr. Adam, insisting that, as the book was not kept by him or under his authority, he could not be affected by it:—

*Lord Chancellor*: “Unless any noble lord shall think that this matter ought to be further considered in the Chamber of Parliament, I will now state what I think of it. I am of opinion that the entry proposed to be read from this book ought not to be received. I am persuaded that the honourable managers offered it to the Court from a sense of duty and justice; and I am persuaded that every one of your Lordships feels, as I do, the greatest possible respect for their dignity and learning; but it is the office and duty of the House, as a Court of Justice, to pronounce upon the legality of the evidence which is offered to it; and I am anxious, in the few words I mean to deliver, to make it manifest that the House has administered, as it will always administer, consistent justice. The certificate of Mr. Andrew Douglas, as to the receipt of money at the Exchequer, was received yesterday, because he was proved to have acted

under a power of attorney from Lord Melville, and that certificate was shown to have been given in the universal and public course by which the receipt of such money was to be manifested. But this is a book which cannot be received on any principle of justice. If it had been an official document to which Lord Melville had access, and which it was his duty to examine, he might have been presumed to be aware of its contents; but no such character has been imputed to it; or if he could have been proved to have referred to it, or to have adopted it, it would have been evidence against his Lordship, whether it be public or private; but the honourable managers did not profess to be possessed of any such proof—saying only that the noble lord had admitted a balance similar to that which the House would have found recorded in the book if it had been received.”

The House unanimously concurred in this opinion, and without further discussion the book was rejected.

When Mr. Tierney, one of the managers for the Commons, was called as a witness, he claimed as a privilege to be examined from his place in the gallery set apart for the Commons' use. *Lord Chancellor*: “I think there ought to be no distinction between one witness and another, as to the place in which he is to be examined. It is the privilege of the Lords to say where a witness is to be placed upon his examination.”—Mr. Tierney, counting, perhaps, on former intimacy and partisanship with the Chancellor, was beginning to remonstrate, when the Chancellor stopped him by saying very gravely, “I apprehend we can hear no further argument on this subject from a member of the House of Commons; and if the gentleman is to be examined, he must stand in the proper place for witnesses.”—Mr. Tierney was obliged to descend to the witness-box, and being asked by Mr. Whitbread whether he had been at any time Treasurer of the Navy? thus vented his spleen: “My Lords, before I answer that question, I presume I may be permitted to clear myself from what may otherwise appear to be a want of respect to your Lordships. There was nothing more remote from my intention than to show any thing inconsistent with the most complete deference to the order and proceeding of this Court; neither have I any personal motive for presuming to protest as to the place in which I am examined. I felt that the courtesy of every Court in the kingdom would have allowed me to be examined in any place in which I might be sitting when called as a witness; and being in the gallery, as one of the Commons, not an indifferent spectator, but as member of a committee of the whole House, to make good the charge against Lord

Melville, I did feel that I should be wanting in the respect which is due to them, did I not endeavour to maintain my right and privilege, of being examined in my place, in which, as one of the representatives of the people, I attended. Having protested against the place in which I now stand, I will proceed to answer the questions of the honourable manager."<sup>u</sup>

In strong contrast to the rudeness and unfairness I have witnessed in Judges refusing, at a late hour of the night, the reasonable request of counsel for an adjournment before entering on the defence of their clients, Lord Chancellor Erskine, while the day was not yet far spent, when he saw that Mr. Plumer appeared fatigued from the effort of having spoken some hours for Lord Melville, thus spontaneously addressed the weary advocate:—"If you seek for a resting-place, in a cause so complicated and extensive as this, you may freely choose it for yourself. This Court, which ought to be an example to all other Courts, will ever hold in the highest reverence the indulgent character of British justice. I am persuaded, without calling for the formal consent of their Lordships, that if you find it more consistent with the duty which you owe to your client, or more comfortable to yourself, you may rest here, and proceed to-morrow morning in your defence."—The indulgence was gratefully accepted.

On the other hand, the Chancellor husbanded the time of the Court by stopping, with some severity of observation, all frivolous inquiries and discussions. Thus the managers, after showing that a document, which they wished to give in evidence, had been admitted to be genuine by Lord Melville, having tried to give it validity by proving that it had been treated as genuine by the Lords of the Treasury, he exclaimed—"Lord Melville having recognised the document, it is already admissible in evidence; but the opinion of the Lords of the Treasury upon it is of no more consequence than the colour of their clothes."<sup>x</sup>

When the verdict was to be given, the Chancellor merely said, "My Lords, your Lordships having fully heard and considered the evidence and the arguments in this case, have

<sup>u</sup> Htsell's Precedents, iv. 288.

<sup>x</sup> The last day Lord Tenterden ever sat in Court (which was on the trial of the magistrates of Bristol),—wishing to rebuke a counsel who was wasting time by irrelevant questions respecting a journey performed by the mayor in a post-chaise and four,—he ob-

served with much solemnity, "Sir, you have forgot to ask him the colour of the jackets of the postillions."—He was taken dangerously ill the same night; and having in his delirium still dreamed of the trial, he expired with these words on his lips: "Gentlemen of the jury, you will now consider of your verdict."

agreed upon several questions which are severally to be put to your Lordships, and the first question is this: Is Henry Viscount Melville guilty of the high crimes and misdemeanors charged upon him in the first article of the impeachment, or not guilty? John Lord Crewe, what says your Lordship on this first article?"—He afterwards put the like question to all the peers present, on each of the ten articles. He himself voted last,—saying, "NOT GUILTY," to the 1st, 4th, 5th, 8th, 9th, and 10th; and "GUILTY," to the 2nd, 3rd, 6th, and 7th articles. But, on summing up the votes, there was a majority in favour of the defendant on all; and the Chancellor thus spoke:—"My Lords, a majority of the Lords have acquitted Henry Viscount Melville of the high crimes and misdemeanors charged upon him by the impeachment of the Commons, and of all things contained therein. Henry Viscount Melville, I am to acquaint your Lordship, that you are acquitted of the articles of impeachment exhibited against you by the Commons for high crimes and misdemeanors, and of all things contained therein."—Lord Melville, in recognition of the fairness of his trial, made a low bow to the Chancellor, and withdrew.

To finish what I have to say of Lord Erskine as a Judge, I have only to advert to the appeal business in the House of Lords while he presided there. Having the assistance of Lord Eldon and Lord Redesdale, to whom he generally deferred, he disposed of it satisfactorily,—with one exception, which I mention with pain, because it threw some suspicion upon the impartial administration of justice in the court of last resort. A daughter of Lord Hugh Seymour, being left an orphan by the death of both her parents soon after her birth, remained under the care of Mrs. Fitzherbert till she was between five and six years old, when her family required her to return to them, and filed a bill in the Court of Chancery to have guardians appointed to her. The Master to whom the matter was referred approved of Lord Euston and Lord Henry Seymour as guardians, and from his decision Mrs. Fitzherbert, who was much attached to the child, appealed to Lord Chancellor Eldon, who, after a long hearing and with less than his usual hesitation, confirmed the Master's report. "While the cause was depending, the Prince of Wales, who lived in Mrs. Fitzherbert's house as his own, was extremely anxious about the event of it. He loved the child

with paternal affection, and the idea of having her torn from him seemed to be as painful to him as it was to Mrs. Fitzherbert." An appeal being brought to the House of Lords against Lord Eldon's order, His Royal Highness made his wishes on the subject generally known, and actively canvassed Peers to attend and vote for a reversal. The hearing of the appeal excited more interest than any judicial proceeding in the House since the Douglas cause. All notion of Mrs. Fitzherbert being appointed guardian was abandoned, but the effort was to have the Marquess and Marchioness of Hertford appointed, there being an understanding with them that they would not remove the child from Mrs. Fitzherbert. Lord Eldon having stated the reasons for his decree, to which he adhered, left the House. Lord Chancellor Erskine moved a reversal of the decree, and that the Marquess and Marchioness of Hertford should be appointed guardians, on the ground that the Marquess was nearest in blood to the infant. Sir Samuel Romilly, who was counsel for the appellant, says, "Several Peers voted against this, but there was no division. I counted between eighty and ninety Peers who were present: the Prince, who was as anxious that Mrs. Fitzherbert should continue to have the care of the child as he could have been if the child had been his own, and who knew that Lord and Lady Hertford would not remove her, had earnestly entreated all his friends to attend. I had, on the Prince's account, done every thing that depended on me to prevent this; and which was only to represent to Colonel M'Mahon what I thought of such a proceeding. The question was certainly one which involved no legal consideration whatever, and which every Peer was as competent to decide as a lawyer could be, but yet to canvass votes for a judicial decision, is that which cannot be too strongly reprobated."\*

Life of Romilly, ii. 146.

END OF VOL. VIII.













